Alberta

Administrative Law I
for
Assessment Review Board Clerks
and the
Municipal Government Board
Administrator

Government of Alberta
Municipal Affairs

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Caution on the Use of the Materials

These materials have been prepared for informational and educational purposes and do not constitute legal advice. They are intended as an educational aid for assessment review board clerks and the MGB administrator, not a substitute for any professional advice. Before acting on this information, readers should consult their own statutes and policies, or seek out the relevant professional assistance.

Learning Objectives

By the end of day, you will be able to:

1. **Describe** your role and responsibilities in the assessment complaint process,
2. **Interpret** the legislation governing the complaint process, and
3. **Apply** the fundamentals of administrative law as guiding principles in your role.

Course Description

This course is designed to provide you with an understanding of your role as an assessment review board clerk, or the Municipal Government Board administrator. To be successful in this role, you must have an understanding of administrative law, the principles of natural justice, and an understanding of how these principles fit within the legislative framework of the assessment complaint system in Alberta.

After an introduction to the basics of administrative law, the course will work through the complaint process, as it relates to the clerk, and demonstrate how the administrative law principles are combined with the legislated requirements to ensure that the complaint process is fair and equitable.

The administrative law information presented in this material is applicable to assessment review board clerks, or the Municipal Government Board administrator. The legislative references are generally directed towards ARB clerks; as such, the MGB administrator should reference legislation related to the MGB in Part 12 of the Act.

Course Content
The Administrative Law I course consists of three modules:

Module 1 – Introduction to Administrative Law

In this module, you are introduced to administrative law, the principles of natural justice and the duty to act fairly. You will learn about jurisdiction and authority, and legislation relevant to assessment review boards. You will learn the importance of maintaining independence and accountability through ethical conduct. You will learn techniques that enhance ways to work collaboratively with other board staff and members.

Module 2 – The Assessment Complaint and Hearing Process

In this module you will be guided through the complaint process, examining the relationship between administrative law and the relevant legislation. You will learn about the pre-hearing process including the associated forms, administrative timelines, disclosure timelines, and scheduling hearings. Best practices in filing and information management, and hearing preparation are also covered.

You will become familiar with your role in supporting board members during the hearing. An overview of board procedures, including the order of proceedings and questions, rules of evidence, the role of witnesses, and case arguments will be examined. You will learn about the role of board counsel, note taking, and confidential information.

Module 3 – Decision Making

Decision making and writing are presented in the third module, where you will gain an understanding of how to best support these functions. Required elements for fact finding, decisions, presentations on writing skills, and best practices in decision making are addressed through practical exercises and case studies. You will learn about the application of costs and penalties.

Learning will be reinforced by using case studies to demonstrate the basic process, and the use of "what if" scenarios. Take-away checklists and reference material will be provided to assist you in managing the complaint process.

Evaluation

To become qualified as an assessment review board clerk or the Municipal Government Board administrator, full participation in the course and exercises is required and a passing grade on the final examination, to be presented in class, must be obtained.

Terminology

Words and acronyms used throughout this document have the following meanings, unless specifically noted otherwise:

ARB – assessment review board
CARB – composite assessment review board
Clerk – the clerk appointed to an assessment review board, and the Municipal Government Board administrator
CQB – Court of Queen's Bench of Alberta
IA – Interpretation Act
LARB – local assessment review board
MGA – Municipal Government Act, Revised Statutes of Alberta 2000 Chapter M-26
MGB – Municipal Government Board
MRAC – Matters Relating to Assessment Complaints Regulation (AR 310/2009)
MRAT – Matters Relating to Assessment and Taxation Regulation (AR 220/2004)

Agenda

Day 1 8:30 am	INTRODUCTIONS LEARNING OBJECTIVES AGENDA MODULE 1 – INTRODUCTION TO ADMINISTRATIVE LAW ADMINISTRATIVE LAW PRINCIPLES What is Administrative Law? Role of an Administrative Tribunal The Big Picture for Assessment Review Boards THE CONCEPT OF JURISDICTION THE CONCEPT OF PROCESS THE CONCEPT OF DECISIONS Challenges to Decisions Court Review of Decisions
10:30	Coffee Break
	THE CONCEPT OF HEARING STYLE Assessment Review Board Style THE REQUIREMENT OF "FAIRNESS" IN PROCESS i. The Right to Be Heard ii. Bias The Test for Perception of Bias iii. A Decision from the Person(s) Who Heard the Case MAINTAINING INDEPENDENCE AND ACCOUNTABILITY THROUGH ETHICAL CONDUCT Alberta Generic Code of Conduct for a Public Agency Tips for Working Collaboratively With Other Tribunal Staff and Members
12:00 pm	Lunch
1:00 pm	MODULE 2 – THE ASSESSMENT COMPLAINT AND HEARING PROCESS UNDERSTANDING THE STRUCTURE OF LEGISLATION ESTABLISHING an ARB EXERCISE #1 – Legislation – Creating an ARB THE COMPLAINT PROCESS Tips for Working Collaboratively With Taxpayers Objections to Jurisdiction or Procedure Timelines for Filing a Complaint Calculating the Complaint Period Complaints Filed After the Complaint Period The Complaint Form
2:30	Coffee Break
	Agent Authorization Form Notifying the Municipality Notice of Hearing Disclosure of Evidence
4:00 pm	EXERCISE #2 – Filing a Complaint
4:30 pm	Wrap Up
Day 2 8:30 am	Day 1 Review and Questions

THE HEARING PROCESS
- Case Study – Ms. Green
- EXERCISE #3 – Legislation – Jurisdiction
- Jurisdictional and Procedural Issues
- Tips for the Clerk for Dealing with Objections
- EXERCISE #4 – Procedural Issues
- Adjournments and Postponements
- Fairness or Efficiency
- Access to Information
- Disclosure
- Tips for Staff – Access to Information and Disclosure

10:30 Coffee Break

- Representatives and Agents
- Legal Counsel
- EXERCISE #5 – Disclosure and Representation
- Working with Translators
- The Role of Witnesses
- Evidence
- Note Taking
- Confidential Information
- Case Study
- EXERCISE #6 – Hearing Process
- Tips Around Hearings

12:00 pm Lunch

12:30 pm MODULE 3 – DECISION MAKING AND WRITING

DECISION MAKING
- Stages of Decision Making

DECISION WRITING
- A Written Decision Is ...
- Basic Pieces of a Written Decision
- Reviewing a Decision in Draft
- EXERCISE #7 – REVIEWING A DRAFT DECISION
- A User's Guide to Legislation

2:40 pm Wrap Up, Evaluations

2:45 pm Coffee Break

3:00 pm Exam

4:15 pm Exam Ends
Wrap up and Daily Feedback Sheet

Housekeeping Details

- Turn off cell phones
- Take and return phone calls at lunch and break
- Respect the time and presence of all those present

Module 1

Introduction to Administrative Law

In this module, you are introduced to administrative law, the principles of natural justice and the duty to act fairly. You will learn about jurisdiction and authority, and legislation relevant to assessment review boards. You will learn the importance of maintaining independence and accountability through ethical conduct. You will learn techniques that enhance ways to work collaboratively with other board staff and members. This module also covers how decisions are reviewed.

Administrative Law Principles

What is Administrative Law?

Generally, administrative law deals with the organization and powers of the government and the role of law in controlling the exercise of those powers. Administrative law is created from the legislation and decisions of the courts.

Role of an Administrative Tribunal

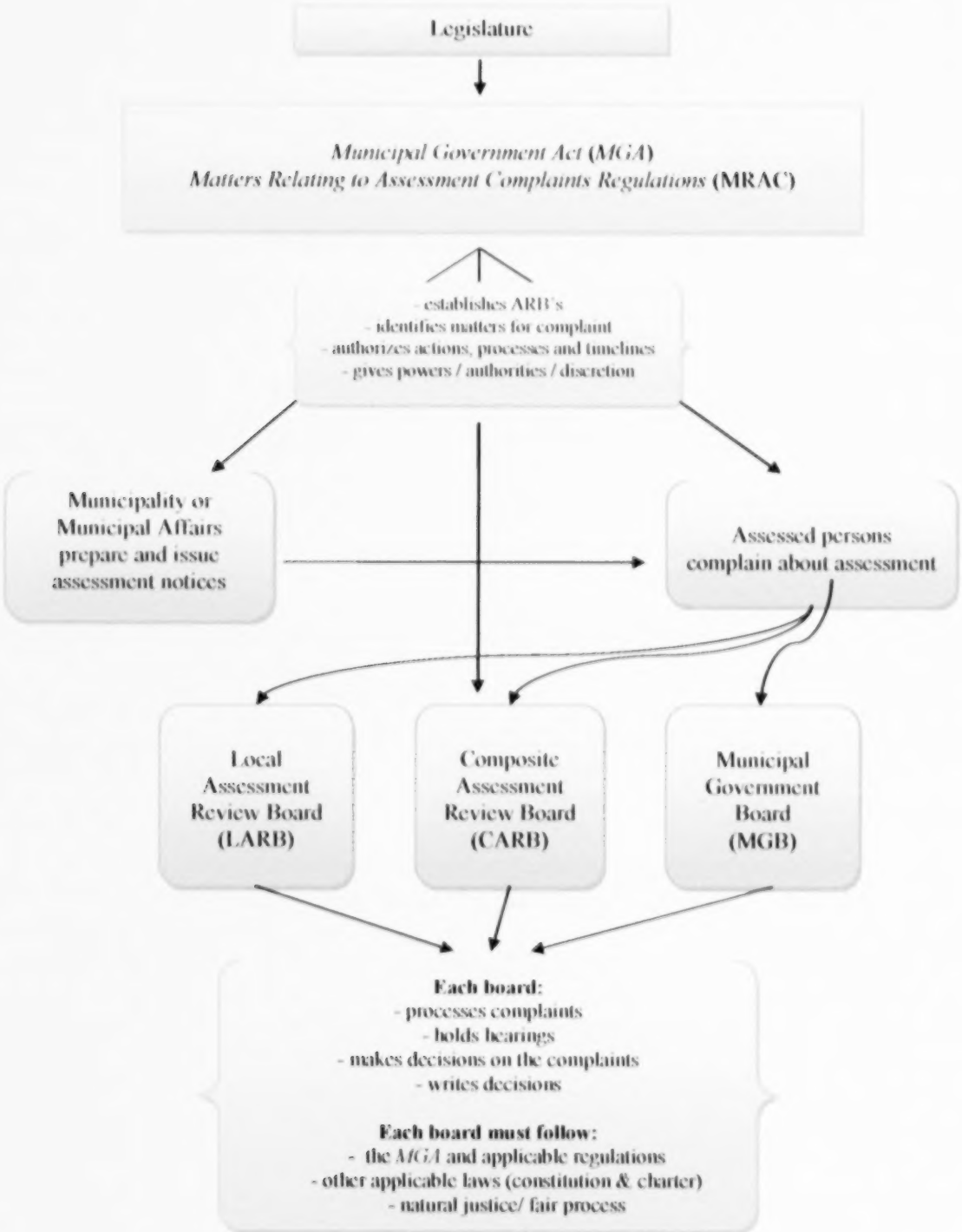
Government will frequently create and authorize an administrative tribunal to carry out certain work and make decisions in a particular field.

The Local Assessment Review Board (LARB), Composite Assessment Review Board (CARB), One Member LARB or CARB, and Municipal Government Board (MGB) are examples of administrative tribunals that deal with and make decisions on assessment matters and matters on a tax notice, other than a property tax.

Administrative tribunals:

- are generally promoted as
  - accessible forums where self representation is possible
  - not bound by rules of evidence or court rules of procedure
  - less concerned with legal forms and technicalities
  - more focused on merits
- are creatures of statute
- make decisions
- work in a legislative framework
- balance quantitative efficiency with qualitative justice.

The Big Picture for Assessment Review Boards


Legislature
Municipal Government Act (*MGA*)
Matters Relating to Assessment Complaints Regulations (MRAC)
- establishes ARB's
- identifies matters for complaint
- authorizes actions, processes and timelines
- gives powers / authorities / discretion
Municipality or Municipal Affairs prepare and issue assessment notices
Assessed persons complain about assessment
Local Assessment Review Board (LARB)
Composite Assessment Review Board (CARB)
Municipal Government Board (MGB)
Each board:
- processes complaints
- holds hearings
- makes decisions on the complaints
- writes decisions
Each board must follow:
- the *MGA* and applicable regulations
- other applicable laws (constitution & charter)
- natural justice/ fair process

Who are Assessment Review Board Staff

Assessment review board staff are appointed by a municipality under the legislation to:

- administer the complaint process
- hear and decide cases
- apply the legislation and procedures of the tribunal
- interpret the legislation where required
- make consistent decisions
- provide fair process to the parties.

Legislation stipulates that an ARB clerk or ARB member must be appointed.

s. 454.1(1) MGA
s. 454.2(1) MGA
s. 455(1) MGA

Legislation outlines that ARB clerks and ARB members meet qualifications set by the Minister in order to perform their duties.

s. 454.3 MGA
s. 49(1) MRAC

Legislation restricts who can be an ARB clerk and board member.

s.455(2) MGA
s. 50 MRAC

Panel members hear and make the decisions; however, it is the clerk and ARB staff that handle most of the assessment complaint processing before and after the hearing. The clerk normally has more interaction with the parties to a complaint and are a valuable resource to them. ARB clerks have specific procedures and time limits to implement or oversee during the case processing.

The Concept of Jurisdiction

What is jurisdiction?

The jurisdiction of an ARB or the MGB is found in the enabling statute.

Jurisdiction is the right, power, or authority to make legal decisions within the limits of the enabling legislation.

All acts and decisions of government must be founded on legal authority.

An assessment review board finds its legal authority or jurisdiction within the *MGA* and MRAC.

The *MGA* and MRAC provide the legal authority to create an assessment review board and define each board's jurisdiction. A board's jurisdiction includes:

- who it can make decisions about – an "assessed person" and/or a "taxpayer"
- what matters it can decide
- what remedies it can provide
- what procedures it must follow
- what timelines apply

The *MGA* and MRAC are quite specific on some of these jurisdictional matters, but also allow discretion to the board to determine other matters. Examples and discussion are contained in module 2.

Jurisdiction

ARBs to operate within:

(1) statutory boundaries
(2) natural justice
(3) a standard of correctness and reasonableness for decisions

ARBs that operate outside (1) - (3) are likely making an error in law or jurisdiction.

The Courts may let the ARB decision stand (defer) if:

- Enabling statute contains a privative clause (sections of law, typically right in the statutes that creates an administrative tribunal, and that states all, or select decisions of that tribunal are final and conclusive and not subject to judicial review.)
- Decision meets the standard of correctness or reasonableness.

When a complaint is filed, it is generally the ARB clerk that determines which board has jurisdiction to hear the complaint. It is important that the clerk has an understanding of the various property types and which board has jurisdiction to hear them. If the clerk is unable to decide which board will hear a matter, the issue can be brought forward to a one member panel to review and decide which board has jurisdiction to hear the case.

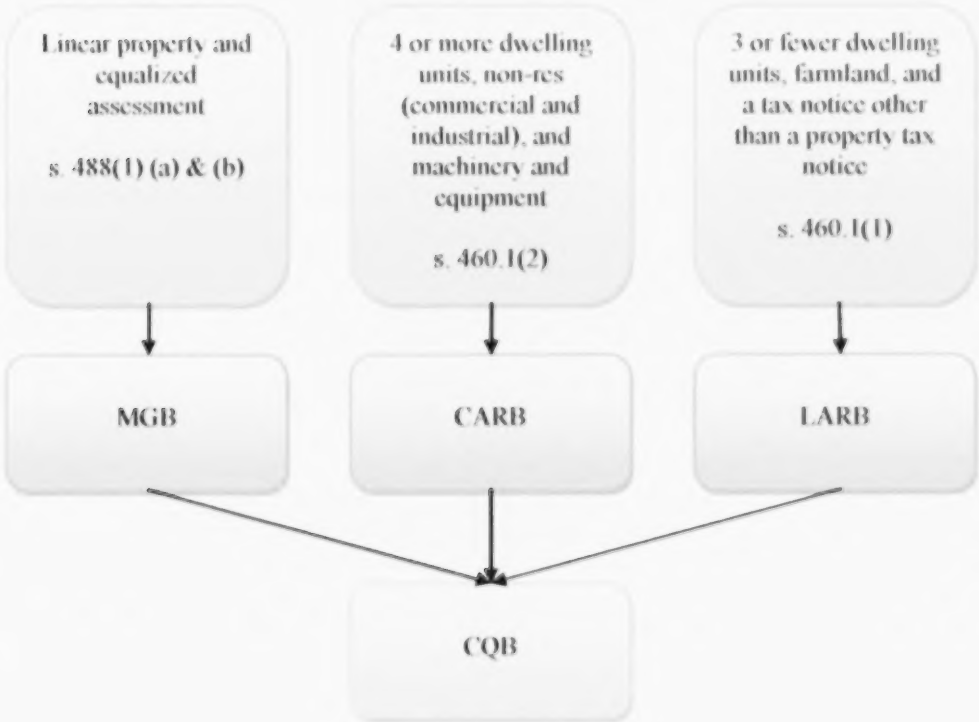

Linear property and equalized assessment
s. 488(1) (a) & (b)
4 or more dwelling units, non-res (commercial and industrial), and machinery and equipment
s. 460.1(2)
3 or fewer dwelling units, farmland, and a tax notice other than a property tax notice
s. 460.1(1)
MGB
CARB
LARB
CQB

Figure 1 Jurisdiction of ARB's

A chart for dealing with ARB Complaints by Notice Type is included in the Appendix of this manual.

The Concept of Process

Every ARB uses a process to deal with the cases that come before it. The process begins with receiving the complaint and determining if the complaint has been filed in accordance with the legislation. Once a complaint has been filed, the clerk then must follow a process to schedule a hearing before the board and notify the parties of the date, place and time of the hearing. The clerk will then receive and process the pre-hearing disclosure of information relevant to the complaint and note if it has been provided within the timelines specified in the regulations. The process then moves to the hearing where the parties can present their information to the panel using documents, pictures and witnesses. The process includes steps for the panel to make and render a written decision to the parties. Finally, the process includes a step to appeal the decision to courts.

More detail on process is covered later under the topic of fair process.

The overview of the process used by the ARBs is in the following charts which are included at References and Resources section.

1. Complaint Process and timeline for MGB – three member and one member
2. Complaint Process and timeline for a CARB – three member and one member
3. Complaint Process and timeline for a LARB – three member and one member

The Concept of Decisions

The parties to a complaint come to the ARB or MGB for a decision. The decision of the board is based on the facts given in evidence (merits), and must be in adherence with the governing legislation.

Within the process for handling a case, the ARB or the MGB will make many other determinations that are often also called decisions. These determinations affect the process, when parties can or must take steps, who must take action, who can appear at a hearing, jurisdiction, procedural objections or applications, and evidentiary or procedural questions during the hearing.

For example, when a board must rule on the validity of a complaint, this is considered a decision of the board, and would be handled in a preliminary hearing. All parties to a complaint must be notified of this hearing in accordance with the regulations. Most matters that require a decision that does not involve an assessment matter, may be dealt with by a one member panel. Any assessment matter must be heard by a three member panel at what is referred to as the "merit hearing".

Determinations like these also affect the legitimacy and validity of the final decision on the merits.

Challenges to Decisions

Under the *MGA*, all appeals from ARB and MGB decisions go to the Court of Queen's Bench of Alberta (CQB). The *Act* outlines:

- who can appeal
- time lines for appeal
- grounds for appeal
- how to get information on the appeal
- the requirement for an ARB to keep an official record of the hearing.

The clerk, under section 14 of MRAC, will normally prepare the record that will be sent to the court.

- what the court will consider when dealing with an appeal
- what the court can order in an appeal.

Persons wishing to appeal must make an application for leave to appeal to the Court of Queen's Bench of Alberta (CQB) who may review the decision only on a question of law or jurisdiction with respect to a decision of a board.

People challenge tribunal decisions for a variety of reasons including:

- not agreeing with the result or the reasons
- feeling they did not get a fair hearing
- feeling the panel was biased
- believing the panel did not consider all the relevant evidence or relied on irrelevant evidence
- believing the panel did not correctly apply or interpret the legislation.

Court Review of Decisions

The *MGA* clarifies the court's role on assessment decisions. The court will review the ARB or MGB decision on the face of the record, using the written documents from the ARB or MGB hearing only. The parties will not receive a new hearing where they can call new evidence.

Legislation (*MGA* and MRAC) and previous court decisions (precedence) establish the criteria which the courts will use when reviewing ARB and MGB decision-making authority. Because the courts are not experts in assessment matters, they are providing deference to the ARB's as experts in assessment matters and will apply the standards of correctness and reasonableness in reviewing ARB decisions.

The courts focus on the reasons for decision as one of the single most important aspects of the decision, after the outcome. Reasons provide the transparent, intelligent and logical justification for the findings, conclusions and outcomes reached by the panel; reasons help the court understand and observe the decision making process used by the panel. Reasons must be able to withstand some scrutiny by the court.

The Concept of Hearing Style

Hearing style refers to how a tribunal characterizes the type of process they use to deal with cases. Style centers around the process the hearing must follow with respect to the panel and the parties to the complaint.

An ARB's hearing style is important because it helps the panel members know how to conduct the hearing. Conduct includes when and what type of questions the panel members can ask and includes whether the panel can ask for evidence or go and get evidence that fills in gaps or makes it easier or more comfortable for the panel to decide the case. Understanding the hearing style of an ARB helps the parties know how to present their cases.

There are three main types of hearing styles:

A. Prosecutorial,

B. Inquisitorial, and

C. Adversarial.

Type A - Prosecutorial Style

Similar to a criminal trial. Involves an allegation that someone has broken the law or committed an act contrary to the law or a code of conduct. Characterized by two or more parties - each representing an opposing view of the case, interacting with the panel. One party acts as the investigating officer/prosecutor for the organization. The prosecutor normally goes first to prove an alleged breach of conduct or standards and the applicable penalty. If the prosecutor does not bring the required information or sufficient information in a case, that prosecutor risks the panel not upholding the breach.

The panel will act like a judge in a trial and let the parties make their own cases as they see fit; the panel will not act as an advocate for any party. A panel member will ask clarification questions, but will not ask questions or seek information that will fill in gaps in the case or provide a fuller story than the parties want to present. The panel makes its decision using only the information presented by the parties.

Professional disciplinary committees often use this hearing style.

Type B - Inquisitorial Style

Similar to a public inquiry. Characterized by a single party or sometimes two parties interacting with the panel.

The panel has the obligation to satisfy itself of all statutory requirements and will therefore take on the role of questioning the party/parties as much as necessary to obtain information.

The panel has the power to obtain additional information not produced in the hearing. The panel will satisfy itself of the statutory requirements by gathering as much information as it needs and will also apply the principles of fair process.

Environmental protection tribunals or other tribunals with a strong public interest mandate often use this hearing style.

Type C - Adversarial Style

Similar to a civil trial. Characterized by two or more parties - each representing an opposing view of the case, interacting with the panel. If the party does not bring the required information or sufficient information in a case, that party risks the panel ruling against the party.

The panel will act like a judge in a trial and let the parties make their own cases as they see fit; the panel will not act as an advocate for any party. A panel member will ask clarification questions, but will not ask questions or seek information that will fill in gaps in the case or provide a fuller story than the parties want to present. The panel makes its decision using only the information presented by the parties.

Tribunals who decide disputes between parties or deal with regulatory matters or benefit entitlements frequently use this hearing style.

Assessment Review Board Style

Clerks need to know that assessment review boards have an adversarial hearing style. This means the parties must come prepared to present a clear and convincing case to the panel. The panel does not have the authority to conduct its own investigations or inquiries. The panel must decide the case based on the evidence disclosed prior to the hearing and the arguments in support of that evidence presented at the hearing. The panel has no authority to deal with matters not identified on the complaint form. This will be discussed in more detail later.

The Requirement of "Fairness" in Process

Earlier the concept of process was explained. The most basic concept of administrative law is that the processes used to reach decisions must be, and be seen to be, fair in order to be valid.

This concept imposes procedural requirements on assessment review board clerks, members and staff to:

1. give person(s) affected by a decision the right to be heard
2. not be tainted by bias or the appearance of bias, and
3. have the person(s) who heard the case make the decision.

Whether a procedure will be considered **fair** will depend on all the circumstances of the case. Circumstances may include specified requirements under the legislation, the rules or procedures, and the unique situations in the particular case.

The *MGA* and MRAC include legislated requirements and procedural sections to ensure everyone gets fair process during a complaint.

i. The Right to Be Heard

The first concept of fairness, the right to be heard, means the parties to a complaint know what the case is about, have sufficient time to prepare, and a reasonable time to present their own case and respond to the case presented by others in the same hearing.

A party can "be heard" in a number of ways: face-to-face in person, by telephone, by video conference, or in writing.

Generally, in order to exercise the **right to be heard** in an effective and meaningful way, certain events must take place:

- the affected individual must be given notice that a complaint has been filed, and a decision is to be made;
- the notice must be given in adequate time and in sufficient detail to enable the affected individual to respond;
- the affected individual must be aware of the case to be met; i.e., information that will be given to or is held by the decision maker must be made available to those affected before the decision is made; no one should be taken by surprise;
- the parties to the complaint must be given an opportunity to present evidence and make an argument to the decision maker.

It is important to know there are certain legislated requirements an assessment review board must adhere to when making decisions. These requirements are contained in the *MGA* and MRAC.

ii. Bias

The second concept of fairness says decision makers need to come to their work with an open mind, willing to let the evidence and the arguments from the parties present persuade them. They need to be unbiased.

Bias is lack of neutrality on the part of the decision maker regarding an issue to be decided. In other words, the decision maker has already made up his or her mind on the case. Naturally, parties want to know that their presentations and efforts have the possibility of persuading the decision maker and influencing the outcome of the case.

Two Types of Bias

The most obvious type of bias is actual bias, such as a pecuniary interest in the decision or a personal association with an interested party, but ARB clerks, members and staff must also avoid any appearance (perception) of bias. Actual and perceived biases are both unacceptable.

- Actual bias means the outcome is already predetermined.
- Perception of bias is the view of one party before a panel that one or more panel members hold a predetermined result or the high likelihood they hold a predetermined result. The courts limit this category of bias to a reasonable apprehension of bias, meaning one that is objectively and independently assessed, not just the fear or view held by the party.
- A party may ask the courts to overturn a decision made by one or more biased panel members.

What Creates a Perception of Bias?

Courts have identified four common situations in which a decision maker will be perceived to be biased:

i. where the decision maker has a material interest in the outcome of the case (i.e., the member or a person related to the member may benefit or suffer financially because of the decision – often called a conflict of interest or pecuniary interest);

ii. association or prior involvement with one of the parties (i.e., the member is related to or closely involved with one of the parties or witnesses or representatives appearing in the case);

iii. prior participation in the process or a related process (i.e., the member previously represented one of the parties now appearing before the tribunal on the same matter or made the decision at an earlier step);

iv. attitude or conduct that shows bias or hostility (i.e., a member who makes statements at the hearing or in public that leave the impression the member has made up his or her mind on the outcome before having heard all of the parties).

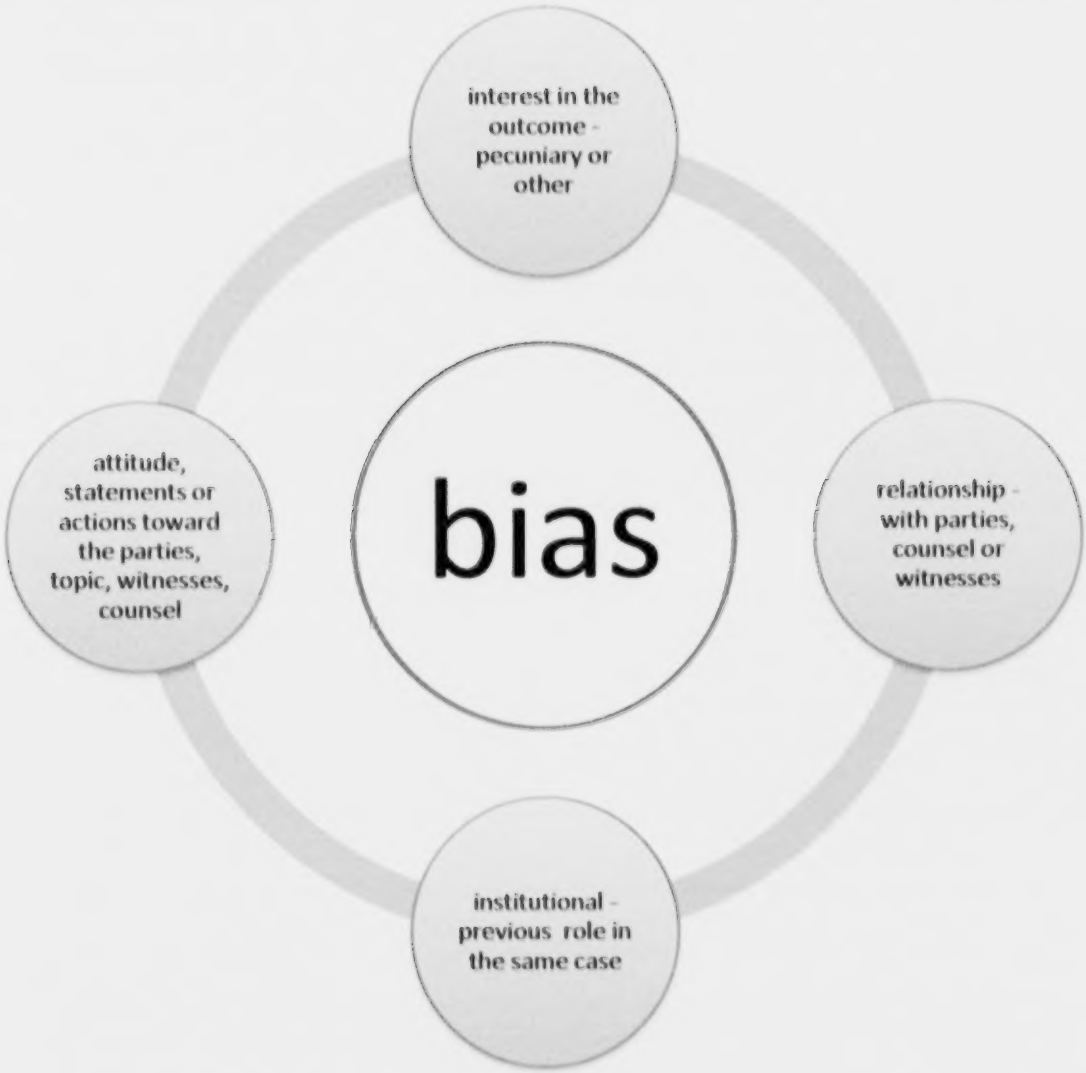

interest in the outcome - pecuniary or other
attitude, statements or actions toward the parties, topic, witnesses, counsel
bias
relationship - with parties, counsel or witnesses
institutional - previous role in the same case

Figure 2 - Categories Creating Bias

The Test for Perception of Bias

The courts created a test to evaluate a concern about an appearance of bias. The test is the reasonable bystander test: Would a reasonable bystander informed of all the circumstances reasonably conclude the decision maker holds a predisposed result for the case?

Regardless of whether a member is consciously or unconsciously biased, or even unbiased, what matters is whether a reasonable, informed person looking at all the facts would conclude that the decision maker could not act impartially. The objector need not show that the apprehended bias actually prejudiced one of the parties or affected the result. It is sufficient for disqualification if this *might* occur. Even decision makers who are confident that they can act impartially, notwithstanding the appearance of bias, must disqualify themselves from the case.

Exceptions to Bias

Some common exceptions around bias include:

- Topic experts who act as panel members. Panel members may be able to draw on their expertise (without adding new information) to decide the case.

- Members of tribunals that deal with complex matters are often drawn from among the experts in the field who, before their appointment, may have appeared before the tribunal on behalf of a party. The earlier professional association alone may not give rise to a reasonable apprehension of bias unless the member, before being appointed to the tribunal, had some involvement in the matter now before the tribunal.

Unbiased does not mean uninformed. It means only that the decision maker should be open to persuasion. Members of a tribunal may read information about the case before the hearing and may hold tentative views on the matters at issue. If the decision maker realizes he or she has crossed the line from informed and tentative views to convinced, then the person must disclose the bias and withdraw from the case.

Tips for Clerks around Bias

- Everyone handling the complaint must avoid creating the perception of bias.
  Bias perceptions can start with the first interaction at the front desk of the office. Bias can arise at any time during the ARB's processing of a case (from the time the appeal is filed until the written decision is sent out). Many people deal with the case and the parties during this process. Each person dealing with the case has an obligation to prevent an appearance of bias by the decision makers.

- ARB members should not prejudge a case.
  They should not make up their minds so strongly in advance that they cannot be influenced to decide another way at the hearing. They should not hold predetermined views of the issues that would be applied regardless of merits. Evidence of prejudgment is usually found in statements made by ARB members. If the clerk suspects this they should speak to the panel member or the panel chair to bring it to the member's attention so the appropriate action can be taken.

- It is unwise for ARB members to express opinions before or during a proceeding.
  A statement that the outcome of a proceeding is a foregone conclusion indicates the existence of impermissible bias. If the clerk hears this they should speak to the panel member or the panel chair to bring it to the member's attention so the appropriate action can be taken.

- Improper conduct by ARB members during the hearing may indicate bias.
  ARB members should never make flippant remarks or derogatory statements about parties or anyone else. Use of intemperate language or the display of feelings of antagonism and hostility toward a party may give rise to a reasonable apprehension of bias against that party. An ARB member who repeatedly interferes with cross-examination or takes part in the questioning of witnesses to such an extent as to appear to descend into the arena may be suspected of having bias for or against a party. A single impropriety may not give rise to a reasonable apprehension of bias, but a series of incidents may. If the clerk hears this they should speak to the panel member or the panel chair to bring it to the member's attention so the appropriate action can be taken.

- Bias can arise because of the decision maker's actions outside the hearing.

  Panel members, whether full time or part time, frequently:

  - interact in the community
  - invite feedback and suggestions
  - consult on changes to process
  - build rapport and relationships
  - convey expectations and do peer evaluations.

  The clerk can continually remind panel members who are assigned to cases to be cautious.

What Happens When Allegations of Bias are Made?

The actions taken are by the parties and the panel members. However, the clerk should understand the process and be able to explain it to panel members, parties and the public.

A panel is not to be paralyzed every time someone alleges bias. If the panel decides that a reasonable apprehension of bias on the part of one of its members exists, that member should be replaced before the proceeding commences. If a panel member is replaced for bias, then the hearing must begin again from the start.

Step 1. The panel member, before accepting an appointment to a case panel and continually during the hearing, needs to determine if he or she has a bias or reasonable apprehension of bias. The panel member must:

- consider the names of the parties, representatives and witnesses for relationships and prior dealings.
- consider the case for any financial interest in the outcome or any previous dealings in this case.
- consult the legislation, previous cases on bias, the panel chair or legal counsel.
- if an actual bias exists, step back from the case.
- if a potential bias exists, disclose the bias to the panel chair, clerk and if required the parties. The parties can waive any concern of bias if they are informed.
- if no bias exists, accept the appointment.
- as a best practice, all panels should ask, at the beginning of the hearing, if either party has an issue with the make-up of the board that will hear the case.

Step 2. A party who suspects bias on the part of a decision maker must raise the concern with the ARB in a timely way, usually in the form of a preliminary objection to the hearing. If a party was aware of bias during the proceeding but failed to object, they may not complain later if the decision goes against them. An objection must be stated when the bias first comes to the party's attention.

Step 3. When an allegation of bias is made, the panel must conduct an inquiry and make a decision. The member should examine Step 1 first. If Step 1 does not resolve the concern, then the panel as a group (or a one member panel) needs to hear from all parties about the bias allegation and then make a decision. The member alleged to have the bias can participate in the discussions and determination of the result, but cannot give evidence or add any information the parties do not share. If the panel rules the member is not biased, it may continue with the proceedings. As this is considered a decision of the board, the decision must contain all of the information required by the legislation and regulations.

An important note: The parties can waive any concern about bias if they are aware of the information creating the potential bias.

iii. A Decision from the Person(s) Who Heard the Case

The third principle of fairness says the panel hearing the case is required to make the decision, not person(s) who were not present for the full case or who do not have the authority to make the decision.

Decision makers have to be cautious about relying on:

- advice or feedback from advisors or outsiders
- previous decisions in other cases (each case must be decided on its own merits)
- input from persons who did not hear the entire case
- decision drafters or reviewers who impose or substitute (by persuasion) their own decision.

Best Practice Tips for the Clerk

- Do not answer questions for the panel or give advice to the panel which might appear to be giving the decision to the panel – the panel must make its own decisions on administrative matters or on the complaint. Remember, only the panel has authority to make a decision – no one else. Everyone has to guard and protect this authority.

- The panel should not make a decision until it has heard all the evidence and representations from the parties – if they appear to do so before all evidence and representations are heard, caution them to wait.

- The panel's independent legal counsel and professional staff can give advice but must leave the actual choices or decisions or conclusions to the decision maker(s).

- Another person may assist the panel to write or edit a decision document, after the panel has made its decision. If the panel asks the clerk to assist with writing, ask the panel to clearly identify its decision, the evidence it found persuasive, and its reasons and rationale for the decision. Have the panel review and approve the draft decision.

Natural Justice and Procedural Fairness

What is Natural Justice?

In a nutshell, natural justice is about the concept of fairness encapsulated in an old adage: Justice should be done *and* be seen to be done. In procedural terms, a decision maker should not only act in good faith and without bias but also should grant a hearing to any person whose interests will be affected by the exercise of that decision before the decision is made.

There are two primary rules underlying the concept of natural justice.

I. "Hear the other side" - A person whose interests will be affected by the decision should be given a hearing before that decision is made.

II. "No one shall be judged in his own case" - The decision maker must be unbiased. If a person has preconceived opinions, a vested interest or personal involvement in a matter they should not attempt to settle that matter. Conventionally, a person is expected to declare any interest and step aside if it could be deemed that the decision was arrived at for reasons other than the merits of the case.

Maintaining Independence and Accountability through Ethical Conduct

To carry out its legislative role, an ARB must be independent of its appointing authority. At the same time, the ARB is accountable for:

- the decisions they make
- the hearings they conduct
- confidentiality of the information received
- the procedures it adopts and implements
- the budget under its authority
- the collegial support of its members and staff
- the reputation of the process, tribunal and panel members.

A code of conduct can assist the tribunal (its members and staff) to meet reasonable standards and goals in its accountability. A code of conduct can be broad or general, detailed or simplified. Usually the ARB members adopt a code of conduct at some point and then continually refine and refresh the code as required to meet current standards and demands.

ARB's may express the code of conduct in different ways, such as in a particular document named a code or through other tribunal publications like the mission and goals. Here is an example from the Municipal Government Board.

MGB Mission, Vision, and Goals

MISSION

The Municipal Government Board shall provide timely, independent, quasi-judicial appeal adjudication to all parties in the areas of assessment matters, planning, subdivision appeals, inter-municipal disputes and annexation recommendations, that yields fairness and equity consistent with the authority of the Municipal Government Act.

VISION

The Alberta Municipal Government Board will be a leader among tribunals with a reputation for excellence in adjudication.

All Albertans shall have access to a fair and independent process with strict adherence to the principles of natural justice and in which all individuals are treated fairly and without bias in an open, orderly and impartial manner.

This Vision will be attained by:

- providing benchmark decisions.
- advocating excellence and providing guidance in decision making to stakeholders.
- demonstrating efficiency, effectiveness and timeliness in the appeal process.
- respecting rights of individuals, businesses, corporations and municipalities.
- ensuring that all property assessments are equitable, fair and correct in accordance with legislation.
- striving for consistency and predictability based on evidence presented.

VALUES

In service to stakeholders the Municipal Government Board values:

- our strength through the diversity of our members and the quality of our staff.
- the right to natural justice and timeliness in the adjudication process.
- respect for and responsiveness to our stakeholders.
- provision of quality service to stakeholders.
- consistent interpretation of legislation.
- commitment to the Code of Ethics and Conduct.
- organizational alignment and a team approach to problem solving.
- innovative use of automated information services.
- continuous organizational development, self-improvement and self-evaluation.
- enriched and rewarding work environment which recognizes productivity.

GOALS

Organizational Effectiveness: The Municipal Government Board will be an effective organization, roles and accountabilities will be clear and understood, and processes and relationships will be purposely aligned.

Processes: The Municipal Government Board will reflect accessibility, efficient scheduling, timely decisions and fair hearing procedures consistent with the principles of natural justice.

Quality Decisions: Municipal Government Board decisions will be legislatively correct, well reasoned, and consistent with evidence and relevant case law and will be issued on a timely basis.

Stakeholder Satisfaction: The Municipal Government Board will be proactive and responsive to stakeholder feedback and satisfaction. A stakeholder is defined as all people who have a vested interest in the outcomes of the Municipal Government Board. This would include Board members, staff, and all external parties who come before the MGB, the department and the Minister.

Budget Plan: The Municipal Government Board budget will reflect the business plan and will provide for effective and efficient use of financial resources to support MGB priorities.

MGB Board Appointments

The Municipal Government Board is an independent quasi-judicial tribunal providing timely appeal adjudication in the areas of assessment matters, planning, inter-municipal disputes, annexation recommendations, and subdivision appeals.

APPOINTMENT PROCESS
"An Independent and Impartial Process"
The appointment process to the Municipal Government Board (MGB) is as follows:

- the Government's Guidelines for appointments to Boards are followed
- the process is conducted through the Personnel Administration Office (PAO) of the Alberta government
- public advertisements for applicants are published in the two major newspapers (Edmonton Journal and Calgary Herald) and on the Alberta Government website at http://www.alberta.ca/ under Jobs in Alberta.
- applicants are screened based on the skill criteria required by the MGB
- to qualify applicants must have experience in more than one of the following criteria:

- legal
- major quasi-judicial tribunal experience
- industry (oil & gas)
- municipal (elected/administrator)
- property valuation (AAA, AIC, Real Estate)
- other professions (i.e. planning, engineer, architect, agriculture)
- initial interviews are conducted with a Committee comprised of the Board, stakeholder representatives, and an independent consultant
- first stage interviews are based on general suitability, knowledge, skills and experience
- in-depth second stage interviews are conducted which include detailed case studies
- recommendations are made based on interview results

The final decision for appointments to the MGB rests with the Minister and Cabinet through an Order in Council.

The Municipal Government Board is a working Board requiring a commitment of 15-20 days per month from its members. The initial training period for new members takes approximately five months. Additional training is conducted throughout the year for all members.

Other Resources for Assessment Review Boards

a. Where to Get Advice

When members and employees require advice and guidance in determining whether misconduct or a conflict exists, or need clarification, they may discuss their issue with:

- A supervisor for employees
- The Code Administrator for members and employees
- [Other - i.e. ethics officer, ethics committee, compliance officer]

b. Questions to Consider

When members and employees are faced with a difficult situation, the following questions may help them decide the right course of action:

- Have I reflected on or consulted with my supervisor or the Code Administrator about whether I am compromising the Code's values, principles or behavioral standards?
- Have I considered the issue from a legal perspective?
- Have I investigated whether my behavior aligns with a policy or procedure of the agency?
- Could my private interests or relationships be viewed as impairing my objectivity?
- Could my decision or action be viewed as resulting in personal gain, financial or otherwise?
- Could my decisions or actions be perceived as granting or receiving preferential treatment?

Affirmation of Code of Conduct

The Code of Conduct for [name of agency] was introduced on [date] and is reaffirmed [annually] by the Board to ensure it remains current and relevant.

Tips for Working Collaboratively With Other ARB Staff and Members

It sounds like motherhood and apple pie to say that everyone in an ARB has to work collaboratively to achieve satisfactory results. Some tips for working collaboratively include:

- work from the same information – different information generates differing viewings and reactions
- set clear processes and time lines
- identify clear role descriptions and expectations
- vocalize expectations – do not encourage mind reading or assumptions
- focus on the bigger picture and goals, not personal agendas, personal priorities or personal pride
- discuss when cases are or expect to be difficult – work out a joint plan for dealing with the case proactively – consult the parties as needed
- solicit information about what did not happen as expected – be prepared to accept reasonable explanations and give a little leeway for different approaches or methods
- focus on the project and actions, respect the personalities and feelings – remember you are dealing with people
- be prepared to examine alternate ways of doing the work – there may be more than one way to accomplish the task
- treat everyone else as you would wish to be treated
- protect the reputation of the board and the credibility of its processes
- stay involved – inactive persons lose touch
- do your part and do it well
- share the praise and the pain equally
- adopt a dispute resolution process within the ARB – one example is *Let's Talk*, a guide to resolving workplace disputes by Alberta Employment and Immigration

Module 2

The Assessment Complaint and Hearing Process

In this module, you will be guided through the complaint process, where the relationship between administrative law and the guiding legislation will be explored. You will learn about the pre-hearing process including the associated forms, administrative timelines, disclosure timelines, and scheduling hearings. Best practices in filing and information management, and hearing preparation are also covered.

You will be familiarized with your role in supporting board members during the hearing. An overview of board procedures, including the order of proceedings and questions, rules of evidence, the role of witnesses, and case arguments will be examined. You will learn about the role of board counsel, note taking, and confidential information.

Learning is reinforced by using a case study to demonstrate the basic process, and the use of "what if" scenarios. Take-away checklists and reference material will be provided to assist you in managing the complaint process.

Understanding the Structure of Legislation

In order to be effective in your role, you must be familiar with the legislation that governs the complaint process, your role as clerk, and that of the ARB.

Alberta legislation is structured in the following manner:

1) General definitions used throughout the act are listed in alphabetical order at the beginning of the Act. Definitions that are specific to a part, division, or section of the Act will be located at the beginning of the specific part, division or section.

2) The legislation is broken down into "Parts", which addresses the various authorities that municipalities are given to conduct their business. Parts may be further divided into "Divisions" to deal with specific components that relate to the topic of each Part.

3) Contained within each "Part" and "Division" are Sections, Sub-sections, Clauses, and Sub-clauses.

Example:

PART 1
Division 1
Section 1
Subsection (1)
Clause (a)
Sub-clause (i)

Parts 9, 10, 11 and 12 of the *MGA* deal with the assessment and taxation of property, assessment review boards, and the MGB.

The *MGA* provides a Table of Contents at the front and an index at the end of the Act. It is important to note that when looking for a specific subject, section numbers – not page numbers are used. Section numbers are located at the top left hand side of each page of the *MGA*. Regulations are formatted in the same way however do not contain indices.

Establishing an ARB

Establishing the Board

The *MGA* s.454 requires an ARB be established by bylaw; a municipality may establish an ARB prior to a complaint being filed, but they must establish an ARB if a complaint is filed.

Appointing Members

The *MGA* s.454.1 & 454.2 requires board members to be appointed by a council with the exception of the provincial member who is appointed by the Minister.

Joint Boards

The *MGA* s.456 allows for the creation of joint assessment review boards. A municipality may establish a joint assessment review board with one or more other municipalities.

Board Member Qualifications

The *MGA* s.454.3 requires board members to be qualified to participate in a hearing in accordance with the regulations. In order for an ARB member to participate in a hearing of the ARB they must successfully complete a training program set or approved by the Minister of Municipal Affairs.

MRAC s.50 states that a person may not be a board member if they are an assessor, an employee of the municipality or is an agent.

Designated Officer – Clerk

The *MGA* s.455 (1) requires the clerk of an ARB be appointed by a council. A municipality will usually appoint a designated officer to act as the ARB clerk prior to a complaint being filed, but they must appoint a clerk if a complaint is filed.

Clerk Qualifications

MRAC s.49 (1) In order to qualify as an ARB clerk, the appointee must successfully complete a training program set or approved by the Minister of Municipal Affairs, and must successfully complete a refresher training program every 3 years.

Exercise # 1

Legislation - Creating an ARB

Instructions:

- Work as a group to answer the true or false questions.
- Identify the pertinent legislation in the *MGA* and/or MRAC that relate to the questions.
- Identify a spokesperson for your group to participate in the class debrief.
- You have 15 minutes.

Questions:

1. In order to establish a LARB or a CARB, a municipal council must pass a bylaw. T/F
2. If a complaint is filed, a municipal council may appoint a designated officer to act as the ARB clerk. T/F
3. Every ARB clerk and the MGB administrator must successfully complete a training program approved by the Minister. T/F
4. Local assessment review boards include three-member and one-member panels. T/F
5. A composite assessment review board must have one provincial member. T/F
6. A municipality must appoint local residents to its ARB. T/F
7. A municipality must appoint a local resident to be the clerk of its ARB T/F

The Complaint Process

The clerk of an ARB is often the first person contacted when an assessed person is unhappy about their assessment and is considering filing a complaint. As a best practice, the clerk should always recommend to the assessed person that they contact the assessor to discuss their assessment concerns with them. This is an important step because the assessed person and the assessor may resolve the issue prior to a complaint being filed. Regardless of potential discussions taking place, the clerk should confirm the date by which a complaint must be filed, and provide the complaint form, and the agent authorization form if required.

Tips for Working Collaboratively With Taxpayers

To effectively deal with taxpayer inquiries and complaints, it is important to be knowledgeable in the principles of administrative law and the legislated processes that you must adhere to. Some tips for working collaboratively include:

- information about the complaint process must be accessible, transparent and complete
- all required forms must be made available - MRAC
- provide assistance to those who may be unfamiliar with, or having difficulty with filing or completing a complaint form
- know what the complaint fee is for the property type (if a fee is charged), and the rules for refunding a fee - MRAC
- be able to determine and inform the taxpayer which type of ARB will hear their case- *MGA*
- be aware of the legislated timelines that must be adhered to;
    - the date by which a complaint must be filed as specified in section 309(1)(c) *MGA*, and how this date can be affected by section 605(1) of the *IA*
- does the complainant require an agent authorization form?

Timelines for Filing a Complaint

Section 309 (1) (c) of the *MGA* specify the timelines that must be followed when filing an assessment complaint. Because municipalities send their assessment notices at different times, the date by which a complaint must be filed can vary by municipality. An assessed person has 60 days from the date the assessment notices are sent to file a complaint.

The 60 day filing period can only be extended should the 60th day fall on a holiday or day when the office of the municipality is closed (i.e. weekend). This is described in s.605 of the *MGA*.

ARB's can hear complaints about tax notices, other than a property tax notice. The period in which to file a complaint on a tax notice cannot be less than 30 days from the date the tax notice is sent. Section 605 of the *MGA* applies to this period as above.

Calculating the Complaint Period

When calculating the complaint filing period, you need to use the *IA* s. 22(4) is used. Day one of the 60 or 30 day period starts the next day after the assessment notices are sent.

Complaints Filed After the Complaint Period

When a complaint is filed after the complaint period has expired, the clerk must accept the complaint and flag it as having been filed late. Section 461(1) of the *MGA* states that a complaint must be filed not later than the date shown on the assessment or tax notice. The ARB has no jurisdiction to hear a complaint filed after that date. Dismissing a complaint is considered a decision of the board and can only be made by a one or three member panel of the board.

The Complaint Form

There are specific requirements for completing the complaint form. Section 469(2) states that a complaint must be in the form prescribed in the regulations (Schedule 1 MRAC). Section 2(1) of MRAC also states that if a complaint is to be heard by an ARB, it must be complete and in the form set out in Schedule 1 of MRAC.

The intent of the legislation was that all complaints must be filed using the regulated form. All sections outlined on the complaint form must be completed in order to be valid. If a complaint is received and is not complete, the clerk should accept the complaint and flag it for the board to decide on its validity. Again, to dismiss a complaint that is incomplete is considered a decision of the board.

The complaint form must contain the information specified in s.460 (7) of the *MGA*. This information may be attached to the complaint form depending on the complexity of the issue(s).

Review the Complaint form in MRAC

Agent Authorization Form

MRAC s.1(b) defines an agent as a person who for a fee or potential fee acts for an assessed person or taxpayer during the assessment complaint process or at a hearing. A complaint filed by an Agent on behalf of the assessed person or taxpayer must be filed with the Agent Authorization Form signed by the assessed person or taxpayer attached. An assessed person or taxpayer may at any time, obtain the services of an agent up to and including the hearing date.

Review the Agent Authorization Form in MRAC

Notifying The Municipality

The clerk must provide the municipality with a copy of the complaint within 30 days of a complaint being filed in accordance with s.462 of the *MGA*.

Scheduling Hearings

Once a complaint has been filed, there are timelines that the clerk must be aware of in order to ensure the complaint process is fair to all parties. A notice of a hearing must be sent to all affected parties to a complaint and include the date, time, and location of the hearing. The notice period differs depending on which board will hear the matter. Ensure the municipality and the complainant is aware of the disclosure timelines and rules.

- LARB – Notice of the hearing must be sent not less than 35 days before the hearing.
- CARB - Notice of the hearing must be sent not less than 70 days before the hearing.
- MGB - Notice of the hearing must be sent not less than 70 days before the hearing.

Review the timeline charts and discuss as group.

Disclosure of Evidence

The timelines for disclosure of evidence are dependent on whether a LARB or CARB will hear the complaint. The clerk needs to determine which board will hear the matter and then inform the complainant and respondent of the dates for disclosure. These dates are dependent on the hearing date. MRAC s. 4, 8, and 21 prescribe the timelines for disclosure of evidence for the merit hearing.

If the board needs to deal with an administrative matter such as the validity of a complaint or other non-assessment matters, the timelines for notice of a hearing and disclosure are prescribed in Division 2 of MRAC. Review these timelines in the regulation.

The timelines are described in detail in Table's 2, 3, and 4 in the appendix.

Exercise # 2

Filing a complaint

Instructions:

- Work as a group to answer the true or false questions.
- Identify the pertinent legislation in the *MGA* and/or MRAC that relate to the questions.
- Identify a spokesperson for your group to participate in the class debrief.
- You have 15 minutes.

Questions:

1. When determining the day in which complaints must be filed, day one of the filing period starts the day after the notices are sent. T/F

2. If a complaint is filed late, the clerk can refuse to accept it. T/F

3. If a complaint is filed in handwriting on a piece of plain paper and not on the regulated form, but contains all of the required information:

    a. it is invalid? Y/N

    b. can the clerk refuse to accept it? Y/N

4. An administrative matter must be dealt with by a one member panel. T/F

5. A clerk can schedule a hearing as soon as a complaint is filed T/F

6. Disclosure evidence that is received outside the prescribed timelines should be flagged as such by the clerk. T/F

7. A complaint that is filed without being signed by the complainant is incomplete and should be dismissed. T/F

The Hearing Process

Parties who appear before an ARB expect to see consistency and predictability in hearing procedures. Hearing procedures need to be open, clear, transparent and understandable by the parties. Procedures need to demonstrate the board's commitment to fair process.

A typical hearing agenda is:

1. Call to order and welcome by the Chair
2. Introductions of the panel, parties and other persons in the room
    i. name, organization and role in the hearing (agent, representative, witness, observer, etc.)
3. Opening comments by the Chair
    i. role and composition of the panel
    ii. role of the parties
    iii. purpose of this hearing
    iv. issues in the hearing
    v. legislative section(s) that applies
    vi. how the hearing will proceed – what happens when, who goes in what order, time, breaks, hearing being recorded or not, whether the panel will interact with the parties in breaks, whether the panel will ask questions, how the parties can get process assistance during the hearing, whether the panel will give a decision today
    vii. formality in the hearing – rules of evidence do not apply, witnesses may be sworn or affirmed, how to address the panel and members, courtesy and respect in the hearing
    viii. any challenges on bias?
    ix. any objections to the panel's authority – time, process, subject matter?
    x. ready to proceed?
4. Evidence from the parties and experts
    i. start with documents filed /disclosed before the hearing (the proposed evidence)
    ii. review each document and if the parties agree it can become evidence in the hearing give it a number or identify it for the record. If the parties do not agree, the document or evidence has to be introduced by the party through one of its witnesses.
    iii. restate the matters to be decided, from the complaint, which creates the relevant base for the evidence and enables the panel to more easily deal with applications or objections during the hearing about new documents or documents not provided when requested or within time
    iv. explain the *MGA* and MRAC sections dealing with new evidence
    v. explain one witness will testify at a time and how each witness is participating in the hearing
    vi. explain if witnesses will be sworn or affirmed to tell the truth by the chair or clerk (the witness has the choice of being sworn or affirmed)
    vii. explain which party calls witnesses first
    viii. explain what happens for each witness – direct examination, cross examination, redirect examination, questions from the panel

ix. tell the parties if questions to the witness are asked directly to the witness or through the chair

x. confirm with the parties if witnesses will be located outside the hearing room until they testify (excluded until they testify)

xi. witnesses to be given copies of all the marked documents (exhibits) – by staff – so they can refer to a document if asked questions about it

xii. witnesses need to speak clearly and slow enough for the panel to take notes and to help the recording if required

xiii. expert witnesses to be questioned first on their qualifications and a decision made by the panel if the witness is an expert and in what field or topic; experts then questioned on the content of their evidence

xiv. deal with each witness and then thank them for attending

5. Arguments /Submissions by the parties

   i. Chair explains what the process involves – who goes first, second, etc.; if the panel will ask questions; if the parties can debate between them; any time limits on the presentation; whether parties should read from their briefs or cases

   ii. each party presents their argument

   iii. panel asks questions to the parties

6. Closing Comments by the Chair

   i. thank everyone for participating

   ii. confirm the issues the panel will be deciding using the evidence and arguments presented

   iii. when and how the decision will be sent

   iv. who to contact after the hearing – staff, not panel

   v. firmly close the hearing

7. Adjournment

Tips on hearings

- Scripts can greatly assist the panel chair to handle opening and closing comments.
- Cards can provide ready access to a typical oath or affirmation.
- Checklists can help the chair and staff deal with objections, concerns or applications that occur during the hearing.

Jurisdictional and Procedural Issues

An objection or challenge to a tribunal's jurisdiction or procedure can occur before or during a hearing. It is usually one of the parties to a complaint who will raise an issue; however, an ARB clerk can also raise issues with the board. In some cases, a preliminary hearing may be required to address the matter.

Examples of matters that may be raised by the ARB clerk:

- the validity of a complaint that has been filed late,
- the validity of a complaint that is not filed in the manner prescribed in the regulations,
- the validity of evidence that has been submitted outside the prescribed timelines,

Examples of challenges to jurisdiction or procedure might include:

- insufficient or inadequate notice of the hearing;
- failure to comply with any applicable legislation;
- alleged bias;
- the matter before the ARB is beyond the powers provided to it by the *MGA* or MRAC;
- a party has applied to a court to have the proceedings stopped;
- someone did not do what they were to do or within the time set;
- parties did not get the information required to prepare; or
- someone needs an adjournment or postponement of hearing.

Tips for the Clerk for Dealing with Objections

- When an objection is raised before the hearing, bring it to the attention of the panel or a one-member panel. Try to have any procedural or jurisdictional objections dealt with before the hearing so the merits of the hearing proceed more smoothly.
- All parties need to be able to provide their comments on the question. Sometimes a party will need extra time to prepare its response. This might require an adjournment or postponement of the hearing.
- The panel will need to decide if it has jurisdiction before it can continue to decide the matters. Sometimes the panel can decide immediately and other times it may be best for the panel to reserve its decision and proceed with the hearing or recess until the panel can get the legal advice it needs to decide the motion. This is particularly so when the motion involves complex questions of law.
- Staff can assist by attempting to reveal any jurisdictional or procedural questions well before the hearing and assisting the parties to exchange all the information about the questions.
- Staff should inform the panel chair as early as possible about jurisdictional or procedural challenges or difficulties so the chair can assist with case management or give directions for dealing with the challenges or difficulties.

Case Study - Ms. Green

The following case study deals with an assessment complaint and the questions or procedures a clerk or administrator may encounter when processing a complaint. During the two days you will be given additional information about Ms. Green's case. Deal only with the information provided. Do not create any additional information.

Instructions:

Take 10 minutes to read the information about the case after which time you will break into groups and go through Exercise # 3.

You are the ARB clerk receiving the complaint from the assessed person. Deal with the following situations as they arise during your processing of the case. Use the *MGA* and MRAC to guide you. Identify the sections of the *MGA* and MRAC you used.

CASE STUDY

Property: 92 Harrow Circle NW, Blue Skies

Appellant: Ms. Green

Respondent: City of Blue Skies

Tax Year: 2010

Assessment: $291,500

Ms. Green owns a house located at 92 Harrow Circle NW in the City of Blue Skies. The house was built in 1975, with an area of 922 square feet, a detached double garage of 864 square feet, and lot size of 8,141 square feet, assessed in "fair" condition. Its value was first assessed as 'average' condition at $316,500 and then reduced by $25,000 to reflect the value needed to bring the property to "fair" condition.

Ms. Green complains her property is over assessed. Mrs. Green bought the house, which was new, in 1975. Its condition has since deteriorated. She says the house is run down and in need of repairs - windows are cracked and the garage needs a new roof. Ms. Green claims that repairs of $15,923 for a new house roof and $9,000 for interior renovations are necessary. The full cost of necessary renovations to the property is more than $45,000, not including the replacement of cracked windows. She believes its condition was far worse than the "fair" condition set out in the assessment. Ms. Green invites anyone to come to her house to assess its condition.

Ms. Green's supporting documents contain some home listings, an appraisal report, a number of sales comparables from January, February 2010 and June 29, 2010 and newspaper articles. Ms. Green claims she has been, and continues to be, over taxed. She says the assessor has reduced her assessment by a further $5,000 after she spoke with him, but she needs a bigger reduction.

Ms. Green states that housing prices in 2010 have declined since 2009 and 2008 and that the sales comparisons used by the assessor from 2008 and 2009 should not be used to determine her assessment. Instead, 2010 sales and her appraisal should be used to set the subject property's assessment amount.

Exercise # 3

Jurisdictional Issues

Instructions:

- Work as a group to answer the questions.
- Use the *MGA* and MRAC to help you answer the questions.
- When you provide the answer, also give the section of the *MGA* and MRAC that gave you the answer.
- Identify a spokesperson for your group to participate in the class debrief.
- You have 30 minutes.

Questions:

1. A complaint is invalid if it does not contain information specified in the *MGA* and MRAC and the ARB must dismiss it. T/F
2. A complaint is invalid if it is not filed within the prescribed period of time and the ARB must dismiss it. T/F
3. A LARB can hear assessment complaints for residential property with 3 or fewer dwelling units and farmland. T/F
4. A CARB can hear assessment complaints for residential property with 4 or more dwelling units, commercial and industrial property, and machinery and equipment. T/F
5. The MGB deals with complaints about linear assessments and equalized assessment matters. T/F
6. Ms. Green comes in to file her complaint. She has the information all written out in a 15 page letter with a large envelope of documents and pictures to go with the letter.
   a. Can Ms. Green file her complaint using a letter? Why or why not?
   b. What should the clerk do if Ms. Green does not use the complaint form?
   c. What should the clerk do if Ms. Green's complaint is filed after the 60 days from the assessment notice?
7. Ms. Green calls you before the hearing and tells you she will bring six witnesses. Three witnesses are other home owners who will testify about their own property assessments. The fourth witness is the president of the "Citizens Against Taxing Seniors" (CATS) who will testify that Ms. Green and other seniors are overtaxed. The fifth witness is an expert property appraiser who has prepared a written report for Ms. Green about the market value of her property. The sixth witness is property manager who will testify about the income from and costs of maintaining his four-plex property.
   a. Does the information about Ms. Green's witnesses raise any jurisdictional concerns for you?
   b. If so, what is the concern?
   c. What should the clerk do?

Exercise #4

Procedural Issues

An ARB clerk or administrator needs to be able to answer questions and deal with concerns that might arise around bias.

Instructions:

i. Work as a group to answer the questions.
ii. Use the *MGA* and MRAC to help you answer the questions.
iii. When you provide the answer, also give the section of the *MGA* and MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 10 minutes.

Questions:

Panel

1. Ms. Green calls you one week before the hearing to inquire about the panel who will hear her case. She wants to know who the panel members will be and if they are qualified to hear the matters being brought before them. What can the clerk tell Ms. Green about?

2. What do you do if Ms. Green tells you she knows one of the panel members because he is her second cousin's husband?

ARB Clerk

3. Ms. Green is a very difficult person. You have almost lost patience with her. Last time she called before the hearing she said she thought you were not treating her fairly and she may as well give up now.

    a. Could your treatment of Ms. Green cause her to challenge the final decision on the basis of bias?

    b. What could you do about Ms. Green's comments before the hearing?

Adjournments and Postponements

Realistically, hearings cannot always be expected to proceed and be completed at the first sitting. From time to time hearings must be postponed or adjourned.

The term **postponement** refers to rescheduling a hearing which has not yet started, but for which a date for commencement has been set. The term **adjournment** refers to the setting of a date for the continuation or rescheduling of a hearing which is in progress.

Tribunals are generally entitled to adjourn or postpone their proceedings at any time; however, under section 15 of MRAC, an ARB may only postpone or adjourn a hearing under exceptional circumstances as determined by the board. Parties must request an adjournment or postponement in writing and contain reasons for the postponement or adjournment. The ARB must be mindful that the timelines specified in section 468 of the *MGA* that ARBs, must, in writing, render a decision within 30 days from the last day of hearing, or before the end of the taxation year to which that complaint applies to, whichever is earlier. CARB's and the MGB have the statutory authority to award costs against a participant when they request an adjournment or postponement that could reasonably have been anticipated, if it results in inconvenience or increased expense to any other participant.

When considering whether or not to grant a postponement or adjournment, the board must consider its legislative authority, the complexity of the matter at hand, the amount of time already afforded the parties for the preparation of the case, the efforts of the parties to be present at the hearing, whether or not there have been any previous postponements or adjournments, and any other relevant factors.

Fairness or Efficiency

All matters concerning the processing, scheduling, and hearing of a complaint involve balancing the demands of fairness and efficiency with the requirements of the legislation. Each complaint and each request must be looked at on its own merits. It is important, however, to bear in mind that common sense lies at the root of many decisions in these matters.

Ensuring that the parties are provided with a fair hearing in accordance with the principles of natural justice is, of course, the paramount concern of any ARB, but efficiency is also essential to the proper conduct of the ARB's affairs. If cases are allowed to drag on without proper reason, the overall quality of the ARB's work is diminished.

Access to Information

Improved access to information and complete data for all parties will promote openness and transparency, leading to even greater confidence and trust in assessments, which should reduce the number of complaints.

An assessed person is entitled to see or receive information about his/her property and other assessed property in the municipality, and as such the municipality must inform the persons of that right on or with the assessment notice at any time during the tax year.

Prior to an assessed person filing a complaint, an ARB clerk should recommend they discuss their issue with the assessor. If the assessed person wishes to do so, they can make a formal request under section 299 and/or 300 of the *MGA* for information showing how the assessor prepared the assessment of their property and/or a summary of assessment on any property in the municipality. The municipality has 15 days to provide this information to the assessed person.

If the municipality does not provide the information requested to the assessed person, the information cannot be used at a hearing against the complainant.

Disclosure

Once a formal complaint has been filed, the process for the exchange of information between the complainant and the respondent before the hearing begins. Proper prehearing disclosure makes the hearing more focused, makes the hearing shorter and helps to prevent or lessen objections and applications about process, jurisdiction and evidence. This exchange of information, otherwise known as disclosure, includes the following:

- all relevant facts supporting the matters of complaint,
- all documentary evidence to be presented at the hearing,
- a list of witnesses who will give evidence at the hearing,
- a summary of testimonial evidence,
- the legislative grounds and reason for the complaint, and
- relevant case law and any other information the complainant considers relevant.

All parties have an obligation and are accountable for providing complete disclosure within the timeframes set out in MRAC. The parties to a hearing should not be surprised by the introduction of evidence of which they were not aware. An assessment review board must not hear any evidence that has not been provided to the other party in accordance with the legislation, or that has not been disclosed within the timelines. See sections 5 and 9 MRAC.

MRAC specifies the rules for disclosure of evidence. These rules include timelines that the parties must adhere to and what information must be contained in the disclosure. MRAC also specifies what an ARB or the MGB can and cannot hear with respect to the disclosure rules. The ARB clerk will begin enforcing these rules by notifying the board of any evidence that was not received within the prescribed timelines. The board may hold a preliminary hearing to decide on matters about disclosure, or they may deal with it at the merit hearing. The CARB and MGB may awards costs for a party's failure to comply or for a party's actions that contribute to an extended hearing or unnecessary hearing. The costs are outlined in Schedule 3 of MRAC.

Tips for Staff - When Dealing With Access to Information Requests and Disclosure Obligations

- determine all legislative requirements and times
- notify the parties in advance of any and all information obligations and times
- communicate clearly and outline how to request an extension or exemption and the consequences of non-compliance
- acknowledge all documents received and all requests
- deal with all requests or applications in a timely way – who can make the decisions (the panel chair or the panel?)
- make notes of all telephone conversations about the file and processing of information
- be consistent in the messages – parties do not appear in isolation
- create a diary system for each file of what step is required and when – bring the file forward at each date to assess what has happened and what is missing – follow up where required
- before the hearing review all actions and times required and the actions taken to see what is outstanding – this may prompt a postponement of the hearing
- keep all documents in one file, in date order
- keep the original or one copy of each document on the file as a clean, unmarked copy – to be used for creating the record in case the file goes to court

- create a consistent list of items the panel is to receive in the hearing package
- note actions resulting in delays that might be considered by the CARB when determining whether to award costs.

Note: Sections 5 and 9 of MRAC state that an assessment review board must not hear any evidence from a municipality relating to information that was requested by a complainant under section 299 or 300 of the *MGA*, but was not provided to the complainant.

Question for Discussion: How would a board member know whether requested information was or was not provided to the complainant?

Representatives and Agents

Some parties will choose not to present their own case during the process or at the hearing and have another spokesperson such as a lawyer or an agent represent them. Under section 51 of MRAC, If a complainant chooses to have representation during the complaint process or at the hearing for which they are paying a fee or potential fee, they must complete and sign the Agent Authorization Form. The form is contained in Schedule 4 of MRAC and must be made available at the municipal office, or can be found the Municipal Affairs website.

Legal Counsel

Legal counsel participates in hearings in two ways: as a representative of one of the parties or as a provider of legal advice to the panel.

Counsel as Advocate

When legal counsel for a party participates in the hearing, counsel must adhere to all the requirements and standards of the process required of the party.

The complainant must complete the Agent Authorization form before counsel can represent them at an ARB hearing (see. 51 MRAC).

Counsel will frequently interact with staff before the hearing to learn about process, deal with disclosure and access to information, and identify and resolve prehearing or procedural matters. Post hearing, counsel may challenge the decision in court, prompting the clerk or staff to provide the record of the hearing for the court application.

Counsel as Advisor to the Panel

Section 17 of MRAC says the ARB may only seek legal advice from a lawyer who is independent of the parties to the hearing.

When legal counsel acts as the advisor to the panel, the counsel is an independent advisor only to the panel. Counsel may meet with the panel privately or deal with requests from the panel and may give the panel legal advice on content and process. Counsel cannot direct the panel on any matter; all decisions, whether substantive or procedural, must be made by the panel.

Most often counsel's advice is not shared with the parties. In some cases, tribunals have standard practices to disclose most information from its independent counsel to the parties (some information counsel would advise against sharing). Where the counsel's advice raises new information or a new legal case or principle, the parties should be informed and given the opportunity to respond before the panel makes a decision.

Exercise # 5 – Disclosure and Representation

The ARB clerk must take steps when processing a complaint that ensure a fair process for all parties.

Instructions:

i. Work as a group to answer the questions.
ii. Use the *MGA* and MRAC to help you answer the questions.
iii. When you provide the answer, also give the section of the *MGA* and MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 30 minutes.

Questions:

Representation

1. Ms. Green decides she wishes to have someone represent her at the hearing. She asks you what she needs to know and do to have this representative.

   a. Is Ms. Green entitled to have a representative at the hearing?

   b. What requirements apply to having a representative at the hearing?

   c. Is there a restriction on when someone can obtain representation or legal assistance?

Notice

2. Ms. Green files her complaint.

   a. What notices must the clerk or administrator issue?

   b. What timelines do the clerk or administrator need to be aware of when these notices are provided?

Disclosure Before the Hearing

3. Ms. Green wants to get a copy of the information that will be used by assessor at the hearing.

   a. Where should you direct Ms. Green?

   b. What information does the assessor have to provide before the hearing and when?

   c. Is Ms. Green entitled to see the information used by the assessor?

   d. Does Ms. Green have the opportunity to rebut the evidence that the assessor is bringing forward at the hearing?

   e. What happens if either party refuses to provide information?

Working with Translators

Translators may be required to allow a complainant or witness to be understood by the panel. The board needs to ensure the translator will accurately translate what is said in either language.

Interpreters or translators assist the board by translating the questions to a witness and translating the witness' answer to the panel. Translators must be sworn or affirmed before the witness is sworn or affirmed. The purpose of the translator oath or affirmation is to ensure he or she is fairly and honestly translating what is transpiring.

A typical interpreter's oath is:

> *Do you swear that you will fairly and accurately translate the questions asked and the evidence given at this hearing so help you God?*

A typical interpreter's affirmation is:

> *Do you solemnly affirm to fairly and accurately translate the questions asked and the evidence given at this hearing?*

The Role of Witness's

Witnesses participate in hearings to provide information to the panel that can assist the panel in its decision making. Parties determine which witnesses to call in support of their cases and determine the order the witnesses appear

Types of Witness's

A factual witness represents most witnesses in hearings, can tell the panel about what the witness knows. This witness should not give opinions and cannot speak about things beyond the witness's personal knowledge or involvement.

An expert witness may give evidence from personal knowledge or involvement, but frequently provides the panel with an additional level of expertise on a subject matter in the hearing. This witness can also give a professional opinion, which the panel can assess and adopt as its own. Opinions from experts are more reliable than other opinions, and courts will allow **experts** to give opinions on technical matters that involve the area of their special expertise. ARBs may consider experts' credentials, education, and experience in weighing the expert's opinions or in deciding whether to listen to the evidence at all.

Questions Witness's can Expect

Witnesses can expect questions about:

- their name, role and organization
- general background – may include education, experience and length of service
- clarifying questions specific to information the witness has
- contrasting versions of events from other witnesses
- clarification of information given by them or other witnesses
- authoring or receiving documents.

Tips for Staff around Witnesses

- obtain proper spelling of names for the record and decision document
- as a best practice, provide information to witnesses about the hearing process
- swear or affirm witnesses if required
- ensure a separate chair and table for the witness at the hearing – in clear view and hearing of the panel and all parties
- determine and understand the authority of the board to order witnesses to appear or produce documents

Parties are responsible to identify their witnesses, determine the order to call the witnesses at the hearing, inform their witnesses when to attend the hearing and where applicable, pay their witnesses fees or expenses as arranged between them.

Compelling Attendance of Witnesses

An ARB has the legislative authority under section 465(1) (a) of the *MGA* to order witnesses to attend the hearing.

Some general considerations of a panel when dealing with requests to compel attendance of witnesses include;

- All witnesses that will appear at a hearing must be disclosed prior to the hearing. The witness must not bring new evidence to the hearing. Any evidence that was not disclosed in accordance with MRAC must not be heard by the board.
- Some boards will deal with requests to compel attendance of witnesses as pre-hearing procedural matters which may give rise to additional questions about sufficiency of time for the hearing, relevance of evidence, or other procedural matters.

If the board issues a "Notice to Attend" or "Subpoena to a Witness" and the witness does not attend the hearing as required, the board may request a court order to compel attendance. The board may also adjourn the hearing to a later date if the absence was the result of an extraordinary circumstance.

Requiring Production of Documents

An ARB has the legislative authority under section 465(1) (b) of the *MGA* to order the production of documents. Often parties seek production of documents held by another party or person in advance of the hearing so that they can properly prepare for the hearing. The initial purpose of the request for production of documents is to gain access to documents held by another person or party. Once the party seeking production has seen and examined the documents, the party may choose not to introduce all or some of those documents as evidence in the hearing.

Some considerations to keep in mind when dealing with requests to compel production of documents include:

- documents should be relevant to the issues before the board and the onus rests with the party seeking the documents to convince the panel that the documents are relevant.
- production of documents can put a party to extensive costs in time and resources to search out and produce documents. A balancing of interests may be necessary.

- generally, the party being asked to produce the documents should be given the opportunity to make comments to the panel before the panel makes its decision. A party may voluntarily agree to produce all or some of the documents.

The panel may have to give directions to protect documents or preserve confidentiality or to set time lines for production and copies.

Example of an Subpoena:

Sample Subpoena / Notice to Attend / Production of Documents

(Letterhead and Logo of the Tribunal)

TO: (name and address of person being sent the notice)

You are required to attend before the _____ on:

Date, time and place

and at such times and places as the hearing may continue until concluded,

to give evidence in a hearing between _____ names of parties _____
concerning _____ description of the case _____.

Or

You are required to produce the following documents to:

Name, Date, time and place

In relation to a hearing between _____ names of parties _____ concerning
_____ description of the case _____.

(The tribunal may want to insert a caution about the failure to appear or adhere to the order)

Date and signature of an assessment review board official

Evidence

Evidence includes all the means of proving or disproving any matter, for example, oral testimony of witnesses and experts, written records, demonstrations, pictures, objects, reports, maps, videos, audiotapes, letters, notes, diaries, computer or data records, etc. The term evidence does not include arguments on behalf of the parties (sometimes called submissions or representations) which are made to persuade the decision maker to take a certain view of the evidence.

The parties bring the evidence to support their cases and to demonstrate to the panel that they meet the legislative requirements for a decision in their favour.

The panel uses the evidence to determine whether the party has met the obligation to prove its case. Has the party proven what it must prove to win the case or obtain the result it seeks? The panel uses only relevant evidence and in decision making, weighs that evidence by determining the value of the evidence in the decision making task.

The documents, witness names, witness statements and other items disclosed by a party before the hearing are proposed evidence only. At the hearing the panel may refuse to accept or admit some of the proposed evidence and then it will not be used to make the decision. This concept reinforces the notion that a panel can read information before a hearing, but must keep on open mind because the information may not be used at the hearing.

Not Bound by Strict Rules of Evidence

ARB's are not bound by all the legal and technical rules of evidence that would apply in a court of law. Some statutes expressly provide that the tribunal has the discretion to accept any evidence and information that it sees fit, whether or not the evidence is admissible in a court of law.

The important factor is for the tribunal to follow the legislative requirements and if possible, to obtain all of the information it needs to make a reasoned, rational decision.

Admitting Evidence

Evidence that is admitted during the hearing must support and be relevant to the evidence provided during disclosure. An ARB may accept new evidence if it relates to the original matter for the complaint however they must determine its relevancy and weight after the hearing.

> *When the panel admits evidence, it or the staff should mark the evidence as part of the official record. Generally tribunals "mark" witnesses by recording their names and administering the oath/affirmation before hearing the witness' testimony. Other evidence (whatever it is) can be "marked" by giving it the next sequential number in the hearing (exhibit 1, 2, 3 etc). The clerk keeps the official list of exhibits/evidence and the names of all witnesses.*

How to Mark an Exhibit:

File #: _____

Exhibit No. _____

Date: _____

Entered by: _____
(name of party or by agreement)

Note Taking

Parties take their own notes in the hearing. Panelists should take their own notes to assist them with the decision making. The clerk should make notes to assist with creating the official record under section 14 of MRAC.

Tips for the Clerk's Notes

Types of activities in the hearing

- witness names and spelling
- evidence numbers and identifiers
- names of panel members
- names of those attending the hearing and roles
- dates of the hearing
- location of the hearing
- any commitments by any party to the panel and when required (to follow up)
- any commitments or cautions by the panel to the parties and timelines
- if the hearing recesses or adjourns, the point the hearing reached and the reason for the adjournment
- any objections or applications raised in the hearing and a summary of the panel's decision on those objections or applications and any reasons given during the hearing
- a summary of the testimonial evidence given by each witness
- the matters or issues from the complaint form about which evidence was given and arguments made at the hearing.

Confidential Information

Confidential information may be presented or demanded before or at a hearing. Assessment hearings are part of the provincial and municipal process, so provincial legislation about personal or confidential information applies. Provincial legislation provides exceptions to assessment review board processes from the general rules which apply to personal or confidential information. These exceptions contained in section 301.1 of the *MGA* and pertain to information requested under section 299, 300, and 301 of the *MGA*.

Panels and Staff need to

- know the legislative protections for personal, business or confidential information
- know the exceptions in the legislation for tribunal hearing processes
- understand that the hearing process and solid decision making can be undermined by excluding information because of the confidentiality shield
- be sensitive to how they handle confidential or personal information
- deal with objections or applications in a way that enables consideration of all the factors
- balance the need for information in the hearing with the concept of confidentiality
- find ways to manage the information so that concerns about personal and confidential information can be minimized or protected during the hearing process

Case Study

Instructions:

i. Work as a group to answer the questions.
ii. Use the *MGA* and MRAC to help you answer the questions.
iii. When you provide the answer, also give the section of the *MGA* or MRAC that gave you the answer.
iv. Identify a spokesperson for your group to participate in the class debrief.
v. You have 15 minutes.

You are the clerk dealing with Ms. Green's complaint. A summary of the information you have now is set out below. Deal with the following situations as they arise before, during and after the hearing on the case. Use the *MGA* and MRAC to guide and explain your answers.

CASE STUDY

Property: 92 Harrow Circle NW, Blue Skies
Appellant: Ms. Green
Respondent: City of Blue Skies
Tax Year: 2010
Assessment: $291,500

Ms. Green owns a house located at 92 Harrow Circle NW in the City of Blue Skies. It is was built in 1975, with an area of 922 square feet, a detached double garage of 864 square feet, and lot size of 8,141 square feet, assessed in "fair" condition. Its value was first assessed as "average" condition at $316,500 and then reduced by $25,000 to reflect the value needed to bring the property to "fair" condition. She completed the Complaint form and only checked box #3 assessment. She seeks an assessment of $240,000.00.

Ms. Green complains her property is over assessed. She has lived in it since 1975, when she bought it new, and its condition has since deteriorated. She says the house is run down and in need of repairs - windows are cracked and the garage needs a new roof. Ms. Green claims that repairs of $15,923 for a new house roof and $9,000 for interior renovations are necessary. The full cost of necessary renovations to the property is more than $45,000, not including the replacement of cracked windows. She believes its condition was far worse than the "fair" condition it was assessed at. Ms. Green invites anyone to come to her house to assess its condition.

Ms. Green's supporting documents contain some home listings, a witness statement and an appraisal report by James Know, a number of sales comparables from January and February 2010 and June 29, 2010 and newspaper articles. Ms. Green claims she has been and continues to be over taxed. She says the assessor has reduced her assessment by a further $5,000 after she spoke with him, but before she filed her complaint. She says she needs a bigger reduction.

Ms. Green states that housing prices in 2010 have declined since 2009 and 2008 and that the sales comparisons used by the assessor from 2008 and 2009 should not be used to determine her assessment. Instead, 2009 sales should be used for the subject property's assessment.

The Respondent says the assessment is correct, fair and equitable, and confirms there was a further $5000.00 reduction before Ms. Green filed her complaint. The property was assessed on the direct sales comparison approach to value. The Respondent provides three comparable sales of homes with detached garages, all smaller than the subject, and all in average condition.

Address	Garage Size	Year Built	Lot Size	Net Building Size	Influences	Sale Date	Time Adjusted Sale Price	Assessment	ASR
92 Harrow Circle (Subject Property)	864	1975	8141	922	-	-	-	$291,500	-
4722 128 A Avenue	570	1974	7638	1183	1)Traffic 2) Multi-residential	01-Nov-08	$316,380	$320,500	1.01
122 Henry Avenue	440	1975	6386	864	-	07-Mar-09	$289,392	$284,500	0.98
29 Henry Avenue	621	1975	9189	1181	1) Multi-residential 2) Park	20-Jun-08	$362,814	$345,000	0.95

The Respondent's documents say that the first comparable sale, at 4722 - 128A Avenue, has a moderate traffic allowance because it is directly in front of Hermitage Road, and has a further negative impact of directly facing a multi-family project. It is much less desirable than Ms. Green's because of its location and nearby noise. The third comparable sale also has a negative traffic factor. The second comparable sale is a bit smaller than Ms. Green's. Based on location, Ms. Green's house is far superior to the three comparables. In the assessor's personal opinion the location of Ms. Green's house increases its value over the comparables' location by ten to fifteen percent, although the mass appraisal model makes a nearly insignificant adjustment for this factor.

The Respondent says "fair" condition is an appropriate assessment of the condition of the subject property. The negative traffic factor is about the same as the difference between "average" and "fair" condition. The Respondent visited Ms. Green's property at one point and also tried to contact Ms. Green to inspect the house, but without success. The Respondent's documents state it has had no evidence of the subject property's condition, because to properly confirm condition, an inside inspection is necessary. The Respondent requests the LARB confirm the assessment.

The hearing has been set and the notice of hearing sent to all parties.

Exercise # 6 - Hearing Process

Questions:

Pre-hearing - Jurisdiction

1. Two weeks before the hearing the assessor (a new person) calls and asks questions about the panel's jurisdiction. The assessor is not sure if a LARB or CARB should hear the case.

    a. How did you determine that a LARB would hear the case, and what should you tell the assessor?

    b. What further information should you provide to the "new" assessor?

Pre-hearing - Postponements

2. Before the hearing the complainant contacts you and requests the hearing be postponed. What should/can you do in each of these situations and what is the likelihood that a postponement will be granted?

    a. It is 13 days before the hearing and the Complainant shows up at the ARB's office and tells the receptionist her husband lost the package of information that she received from the Assessor.

    b. The day before the hearing, the Complainant sends a letter to the ARB stating her godmother in Arizona is dying and she must leave town to be with her.

    c. Thirteen days before the hearing the Complainant sends a letter to the ARB requesting a postponement so she can find a qualified agent to represent her. She states the respondent's material, which has just been sent to her, is too complicated for her to understand.

Pre-hearing - Timelines

3. Ten days before the hearing, the Complainant appears with a document containing a summary of the oral evidence she intends to give at the hearing.

    a. Can you accept this document from her and if so, under what conditions?

4. Before the hearing the Complainant requests additional time to file her rebuttal evidence stating as English is not her first language, she is having some of the documents given to her by the Respondent translated. She states the Respondent will agree to an extension of the filing deadline.

    a. Can the timeline be extended?

    b. What should the clerk do with the request?

During the Hearing - Record

5. The clerk of the ARB may be required to attend the hearing and compile the record of the hearing.

    a. What must be included in the record? List the documents that must be included in the record, the source/author of each document and where you would find the document, or who you would go to, if it was missing.

Document	Source/author	Who to go to if missing?

Post Hearing – Clerk's Conduct

6. The day after the hearing, you receive a call from the Ms. Green's son, who thanks you for being so helpful leading up to, and during the hearing. He says he knows he will get a call and letter from the LARB about the decision, but asks if you can remind him when the decision will be released and if you give him a hint into what the decision will say.

    a. What should the clerk say to Ms. Green's son? Why?

Post Hearing - New Information

7. After the hearing concludes but before the panel sends out its decision, you receive a letter from Ms. Green enclosing a sworn statement from another witness who could not be present at the hearing. The letter and statement have not been copied to the other party.

    b. What should the clerk do with this information?

Tips Around Hearings

These tips are for both the panel and the clerk. Each person needs to be aware of what everyone else is or should be doing to make the hearing process fair.

Before:

- panel check for biases; staff identify potential concerns about bias
- staff ensure the proper documents are filed, received, shared before the hearing within the proper time limits
- staff answer inquiries from the parties – about process, legislation, time limits etc.
- staff make the hearing arrangements and send out notice of hearing
- staff prepare the hearing package/file for the panel
- staff and panel come to the hearing well rested and prepared to participate
- staff bring the legislation, rules etc
- panel and staff read the materials or determine when to read them and how to deal with questions the panel may have
- panel and staff read the legislation and procedures and anticipate any concerns that might arise at the hearing
- staff ask questions of the panel chair if unsure
- panel keep an open mind

During:

- panel (and staff) remain sensitive to situations raising potential biases
- help maintain the hearing decorum – apply the procedures
- panel ask appropriate questions – if member is unsure, request a recess to speak with the panel
- panel keep an open mind
- panel keep own notes to help with decision making
- staff keep the hearing record, list of evidence and witnesses and transcript of the hearing
- staff and panel keep hearing fairness in mind at all times

After:

- panel set aside the appropriate time to discuss the case to make a decision
- panel and staff remain sensitive to situations raising potential biases
- staff and panel - use a decision making model to help the panel
- determine what the standard for decision making is
- panel keep an open mind until you've reviewed all the evidence
- members voice input in the decision making
- determine who will write the decision and when the panel will review the draft
- panel (and staff) review the draft to provide meaningful feedback
- panel and staff keep fairness in mind
- staff finalize the record
- staff publish the decision and deal with inquiries about it

Module 3
Decision Making and Writing

ARB decisions be must correct in that they adhere to the legislation governing them. That is not to say that the legislation can be used to deny someone's right to be heard. Decisions must be fair and reflect the principles of natural justice but also must be correct under the law. Court's will look at two things when reviewing an ARB decision. Was the decision correct under the law, and was the decision reasonable given the rational and reasons supported by the evidence stated in the ARB decision.

ARB decisions should be consistent with earlier decisions from the same panel or from a similar panel to provide the best benefit to the public, parties and future panels. Consistency refers to the way in which the panel deals with matters of principles, legislative terms, legislative interpretation and legislative application, not with the facts of a case. Every decision must be based on its own merits and facts.

ARB members need to read and be aware of decisions of other boards. Staff can assist by being aware of new and leading decisions and bringing those decisions to the attention of the board.

Keep in mind that ARB decisions do not set precedence and are not binding on other boards – only court decisions are precedent setting and they are binding.

In this module, decision making and writing are presented. You will gain an understanding of how to best support these functions. Required elements for fact finding, decisions, presentations on writing skills, and best practices in decision making are addressed through practical exercises and case studies.

Decision Making

The ultimate goal of the parties to a complaint is to obtain the decision of the ARB panel that is hearing the case. Hearings allow the board to gather the information needed to make factual decisions and hear the arguments from the parties about how to interpret and apply the legislation.

The decision making process[1] of the panel includes four stages:

1. identifying the legislation and framing the issues/questions and conditions or legislative requirements of each issue
2. identifying the relevant evidence and making findings of fact on the evidence
3. applying the facts to the legislation to reach conclusions and expressing the decision maker's rationale for the conclusion
4. reaching the decisions and formulating the directions for implementation

Each stage involves separate action by the panel; each stage progresses the panel to an informed, well founded and logical decision which is easy to explain and justify.

Stage 1. Identifying the legislation and framing the issues/questions and conditions or legislative requirements of each issue

- The assessment complaint form describes the issues or matters for the complaint (section 460(5) and 460(7) *MGA*), the board must not hear any matter in support of an issue not indentified on the complaint form (section 2 and section 5(1) MRAC).

[1] This decision making model is copyright to the Foundation of Administrative Justice and was created by FAJ in 2001 as part of its regular training program. FAJ has given permission for GOA to use the model in its assessment review board training.

- The panel then searches the applicable legislation to determine the sections that apply.
  - To determine if the panel has the jurisdiction (or authority) to deal with the case.
  - To read the sections and make a list of the conditions, standards, pre-requisites that must exist for it to decide the case. This becomes the list of the factual items the parties must prove to obtain the answers they seek (the conditions, criteria, required elements, etc).
- Next, the panel will state the issues and conditions as questions to focus themselves and to move them towards answering the questions for the parties.

Stage 2. Identifying the relevant evidence and making findings of fact on the evidence

- The panel sorts the evidence received in the hearing according to the list of conditions under each issue. The key to sorting the evidence quickly is to apply the relevance test.
- Then the panel takes each group of evidence and assesses it to determine if the condition has been met or proven or not.
- The panel repeats the previous step over and over until all the evidence has been examined.

Stage 3. Applying the facts to the legislation to reach conclusions and expressing the decision maker's rationale for the conclusion

- The panel goes back to the list from Stage 1 and the legislation to determine what conditions are mandatory and what conditions are optional for the party to prove. Mandatory conditions must be established through evidence or the complainant will not be successful. Optional conditions mean the party may be able to prove only one of a list or prove the item in a number of different ways.
- Then the panel does a comparison of the list from stage 1 (what must be proven) to the list in stage 3 (what has been proven) to come to a logical answer to the questions posed in the issues. Has the legislative test been met?
- Where the two lists match, the legislation will direct the panel to the answer on the issue.
- Where the two lists do not match, the panel will not have the authority to give the answer the complainant seeks and will have to dismiss the complaint or deny the application.

Stage 4. Reaching the decisions and formulating the directions for implementation

- Finally, the panel collects all of its decisions on the issues and reaches its final decision on the complaint.
- The panel then identifies the directions or remedies the case requires and any details of implementation.

The panel's discussion about how and why it makes the choices it does become the panel's reasons for the decision.

Following the decision making template above, the decision making process for an assessment review matter might look like the following.

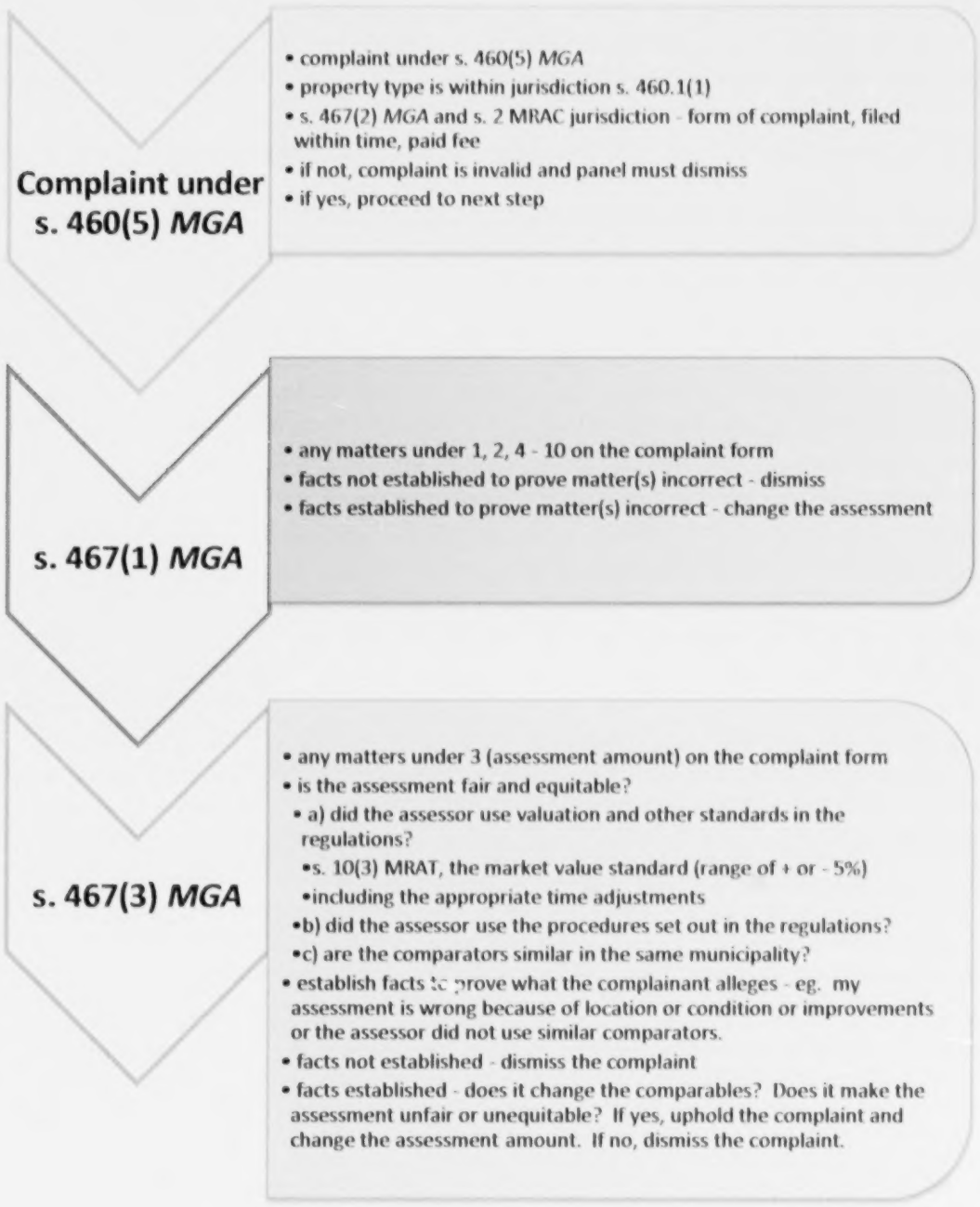

Complaint under s. 460(5) MGA
• complaint under s. 460(5) MGA
• property type is within jurisdiction s. 460.1(1)
• s. 467(2) MGA and s. 2 MRAC jurisdiction - form of complaint, filed within time, paid fee
• if not, complaint is invalid and panel must dismiss
• if yes, proceed to next step
s. 467(1) MGA
• any matters under 1, 2, 4 - 10 on the complaint form
• facts not established to prove matter(s) incorrect - dismiss
• facts established to prove matter(s) incorrect - change the assessment
s. 467(3) MGA
• any matters under 3 (assessment amount) on the complaint form
• is the assessment fair and equitable?
• a) did the assessor use valuation and other standards in the regulations?
•s. 10(3) MRAT, the market value standard (range of + or - 5%)
•including the appropriate time adjustments
•b) did the assessor use the procedures set out in the regulations?
•c) are the comparators similar in the same municipality?
• establish facts to prove what the complainant alleges - eg. my assessment is wrong because of location or condition or improvements or the assessor did not use similar comparators.
• facts not established - dismiss the complaint
• facts established - does it change the comparables? Does it make the assessment unfair or unequitable? If yes, uphold the complaint and change the assessment amount. If no, dismiss the complaint.

Figure 3 – Sample - Alberta's Assessment Decision Making Model on Residential Property

- the panel makes the decision
- avoid participating in any discussion of the case with the panel that might purposely or inadvertently persuade the panel or provide it an answer to a question the panel must answer
- encourage the panel to use a structure for decision making and to work **to** the result not **from** the result
- encourage and assist the panel to use a collaborative process that allows all panel members to participate fully in the decision making – this supports the independence of the decision makers
- encourage the panel to use the legislation as the framework for the pieces the complainant must prove
- encourage the panel to deal with one issue at a time instead of everything together
- encourage a dissenting member to clearly express his or her reasons for dissent that can then be included in the dissent portion of the written decision.

Decision Writing

A written decision is the method of communicating the decisions and reasons of the panel to the parties. It is the voice of the panel in written format. The quality of the decision reflects the quality of the decision making process. A panel cannot clearly write a decision it has not made; do not use the decision writing process as a substitute for decision making. Panels issue written decisions to provide clarity and certainty about their decisions.

Just as different panels would "speak" their decisions in different ways, so will panels "write" their decisions differently. Although Alberta Municipal Affairs cannot expect that every decision will be identical, it can expect that decisions will follow a consistent format and contain consistent information. The decision should be identifiable as an assessment decision from the quality and general format, not from the use of boilerplate terminology.

Why Tribunals Write Decisions?

- to explain
- to persuade
- to inform
- to educate
- to meet the statutory requirement
- to prevent arbitrary decisions

Who do Panels Write For?

- the complainant
- the respondent
- assessors
- professionals in the industry
- assessment organizations and groups

- other panels
- the courts
- the department and future legislators
- the public.

What Defines a Well Written Decision?

A well written decision:

- meets legislative requirements
- is published within the mandated timelines
- clearly states the questions/issues the panel will address
- identifies and explains the law and policy applicable to each issue
- explains how the panel interpreted the legislation and policy and applied it to the facts of the case
- is clear, succinct and understandable
- has a structure and a logical flow
- can be implemented without further clarification
- uses plain, everyday language where ever possible and where not, uses and explains terms in a consistent manner
- uses headings, tables of contents, bullets, addendums, summaries, lists and similar tools to enhance the readability of the decision
- is accurate in spelling, names, quotes and references, grammatically correct and logical.

A well written decision also:

- demonstrates the panel considered the information and arguments put before it
- reveals the panel heard and weighed the evidence before it, showing how it made findings of fact relevant to the questions
- reflects the expertise of the panel in its reasons and considerations
- where there is conflicting relevant evidence, shows how the panel resolved the conflicts and which evidence it relied upon and why
- shows the panel used a logical, orderly process to make its decision and that each decision flows from and melds with the previous decision and leads to a logical conclusion that resolves the issues
- makes the panel's decision making thought process clear and understandable.

Basic Pieces of a Written Decision

Sections 13 of MRAC sets out the requirements for an ARB decision which include:

- a brief summary of the matters or issues contained on the complaint form
- the ARB's decision on each matter or issue
- the reasons for decision, including any dissenting reasons
- any procedural or jurisdictional matters that arose during the hearing and the ARB's decision on each.

The typical pieces of a well written decision include the following. A panel need not use these labels and may change the order to make the most sense for a particular case. The amount of time the panel has to write the decision will naturally affect how extensive it makes each section.

Nature of Application/Introduction
- identify the parties, relevant statutory provisions, subject matter and what is being sought (who, what, when, and where)
- state in own terms (versus "pleadings")

The Issue or Issues
- the matters raised in the complaint
- identify at outset (part of introduction or separate)
- guidepost to what is relevant

Positions of the Parties
- may not require separate section
- do not regurgitate submissions, just summarize
- make reference to arguments not expressly considered by the panel and why those arguments were not addressed
- usually included in the analysis section or stand alone section

Legislative Tests
- drawn from the Act or Regulations - both MRAC and MRAT can apply
- identify the tests the panel applied
- usually included in the analysis section or stand alone section

Relevant Facts
- not the evidence but findings of panel
- decide on logical order or structure (chronological, by subject, etc.)
- dealing with conflicting testimony (credibility)
- documentary evidence
- only the relevant facts (may want to allude to irrelevant testimony)
- ensure accuracy (ire of parties and prejudice on appeal)
- usually included in the analysis section or stand alone section

Reasons
- for factual findings
- for any interpretations of the legislation or regulation (i.e. the meaning of "complete" if not defined)
- for reaching the conclusions reached by the panel (we conclude because ...)
- usually included in the analysis section or stand alone section
- some things to avoid: "leap of faith" (i.e., no real explanation); "cut and paste"; overuse of precedent; extensive quotations

Reasons / Analysis – An Alternate

- essence of reasons: why was the decision reached?
- logical progression (conclusion appears obvious from facts and discussion of legal principles)
- includes legislative tests, relevant facts, reasons
- some things to avoid: "leap of faith" (i.e., no real explanation); "cut and paste"; overuse of precedent; extensive quotations
- may be a combined section incorporating Reasons, Legislative Tests, Relevant Facts, and Positions of the Parties

Conclusion

- succinct statement of decision on the appeal
- may want to have summary for each issue in longer decisions and a case conclusion of all the issues

Order

- clear statement of the directions and times given to the parties to implement

Reviewing a Decision in Draft

Either one of the panel members or someone else may write the decision after the panel has made the decision and is able to convey its reasons.

A best practice for decision writers is to have someone else review the draft decision. The following tips can assist a person to collaboratively review a decision drafted by someone else.

Tips for Commenting on a Decision Written by Someone Else

- respect the final decision but look for the way the written document conveys that decision
- look at the decision from the complainant's perspective – will the complainant understand the decision and reasons for decision?
- provide feedback on accuracy, clarity, comprehension, logic, flow and structure
- point out where the decision does not include the pieces required by MRAC
- provide suggestions on grammar but respect the final choice may rest with someone else
- compare the decision to any style guide adopted by the tribunal to see that the style guide has been followed and if not make suggestions for improvement
- point out gaps in logic or flow but leave the final alteration to the writer and final choices to the panel
- respect that writing is difficult work, often done in a time crunch, and that your choice of words may not be the same as the writers

Exercise # 7 – Reviewing a Draft Decision

Instructions:

1. You are asked to provide feedback on a draft written decision by a panel which heard and decided the Ms. Green case used in the earlier exercises. The draft decision has been circulated to you for review and comment.
2. Read the attached draft decision.
3. In your group, answer the questions.

ORDER No. 0015444

ORDER - Draft

BEFORE THE (LOCAL/COMPOSITE) ASSESSMENT REVIEW COMMITTEE
On October 24, 2010

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT, STATUTES OF ALBERTA 2000, CHAPTER M- 26.

AND IN THE MATTER OF THE ASSESSMENT COMPLAINT

BETWEEN:

[First Name] Green	Complainant

AND:

City of Blue Skies	Respondent

Topic: Assessed Value of Single Family Residence
Property: 92 Harrow Circle NW, Blue Skies
Appellant: Ms. Green
Respondent: City of Blue Skies
Tax Year: 2010
Assessment: $291,500

Overview of the Property and Initial Assessment:

The property is a bi-level house on a city lot located at 92 Harrow Circle NW Blue Skies. The property is assessed in "fair" condition for an assessed value of $291,500. The house was built in 1975, with an area of 922 square feet, a detached double garage of 864 square feet, and lot size of 8,141 square feet.

Summary of Ms. Green's Position

Ms. Green complained that her property is assessed too high. She stated the property condition was far worse than the "fair" condition used by the assessor. She also says her property has been and continues to be over-taxed. She noted that the Respondent has reduced her assessment by a further $5,000 before this hearing. Ms. Green asked that her property assessment be reduced to $220,000.

She has owned and lived in the property since 1975, when she bought it new, and its condition has since deteriorated and needs repairs. She says the repairs will cost $15,923 for a new house roof and $9,000 for interior renovations. The windows are cracked and the garage needs a new roof. The full cost of

necessary renovations to the property is more than $45,000, not including the replacement of cracked windows.

Ms. Green's information about costs of repair comes from verbal quotations she received, she did not provide any written quotes. She also provided some home listings, a realtor's report, a number of sales comparables from January and February 2010 and newspaper articles.

At the hearing, Ms. Green presented another sold comparable from June 29, 2010. This comparable is a detached single family bungalow built in 1975, with an area of 1013 square feet, located in the Fraser neighbourhood at 14544 – 26 Street NW, that sold for $220,000. She presented this comparable to show that housing prices in 2010 have declined since 2009 and 2008 and that the sales presented by the Respondent from those years should not be used to determine her assessment. She wants the Board to rely on 2010 sales data for her property's assessment. The Board did not rely on this June 2010 market comparable because Ms. Green did not include the information in her pre-hearing disclosure. Prehearing disclosure is now mandatory under MRAC.

Summary of the Respondent's Position

The Respondent stated that the assessment was correct, fair and equitable. The property was assessed on the direct sales comparison approach to value. The Respondent presented three comparable sales of bi-level homes with detached garages, all smaller than the subject, and all in average condition. The Respondent stated that it had no fair condition comparable sales to present.

Address	Garage Size	Year Built	Lot Size	Net Building Size	Influences	Sale Date	Time Adjusted Sale Price	Assessment	ASR
92 Harrow Circle (Subject)	864	1975	8141	922	-	-		$291,500	-
4722 128 A Avenue	570	1974	7638	1183	1) Traffic 2) Multi-residential	01-Nov-08	$316,380	$320,500	1.01
122 Henry Avenue	440	1975	6386	864	-	07-Mar-09	$289,392	$284,500	0.98
29 Henry Avenue	621	1975	9189	1181	1) Multi-residential 2) Park	20-Jun-08	$362,814	$345,000	0.95

The Respondent explained that the first comparable sale, at 4722 - 128A Avenue, has a moderate traffic allowance because it is directly in front of Hermitage Road, and has a further negative impact of directly facing a multi-family project. It is much less desirable than the subject property because of its location and nearby noise. The third comparable sale also has a negative traffic factor. The second comparable sale is a bit smaller than the subject. The Respondent submitted that, based on location, the subject is far superior to the three comparables. The Respondent's assessor stated that in his personal opinion the location of the subject property increases its value over the comparables' location by ten to fifteen percent, although the mass appraisal model makes a nearly insignificant adjustment for this factor.

The Respondent submitted that "fair" condition is an appropriate assessment of the condition of the subject property. The Respondent stated that the negative traffic factor is about the same as the difference between "average" and "fair" condition. The Respondent's assessor visited the subject property at one point and also tried to contact Ms. Green in order to inspect it, but without success. The Respondent also stated that it has had no evidence of the subject property's condition, because in order to properly confirm condition, an inside inspection is necessary. The subject property does not qualify for any lower characterization of condition.

The Respondent submitted that the comparables indicate that the subject property is fairly and equitably assessed, and requested the Board to confirm the assessment.

ISSUES

1. Is the subject property correctly and fairly and equitably assessed?

2. Can the Board deal with Ms. Green's complaint about being over taxed?

DECISION

The complaint about the above property assessment is denied and the assessment is set at $291,500. The Board has no jurisdiction to hear tax complaints.

REASONS and LEGISLATION

Issue 1

Under the *Municipal Government Act*, the ARB cannot reduce an assessment which is fair and equitable.

MGA 467 (3) says

> *An assessment review board must not alter any assessment that is fair and equitable, taking into consideration*
>
> *(a) the valuation and other standards set out in the regulations,*
>
> *(b) the procedures set out in the regulations, and*
>
> **(c)** *the assessments of similar property or businesses in the same municipality.*

The Board examines the assessment in light of the information used by the assessor and the additional information provided by the complainant. If the initial assessment fits within the range of reasonable assessments and the assessor has followed a fair process and applied the statutory standards and procedures, the Board will not alter the assessment. Within each case the Board may examine different factors, depending on what the complaint raises as concerns.

In this case, first we examine the evidence about the condition of the property because Ms. Green raises the

issue and the condition of the property affects the comparables used in the valuation. There is limited evidence before the Board showing the actual condition of the property. Ms. Green's own evidence says the property has deteriorated to below a "fair" status. The Respondent has not been able to investigate the property but from an outside review characterized the property in "fair" condition. Where the assessor has been unable to properly investigate the condition of the property, the Board requires evidence independent from the complainant's own opinion showing the condition of the property. Written work estimates provided after site visits and testimony of contractors or appraisers can provide such independent evidence. Under the circumstances, there is insufficient objective evidence to reduce the subject property's condition to a lower rating. We find the property to be in fair condition.

Next, we looked at the valuation, which is the second matter raised by Ms. Green. We examine the comparables provided by both parties. Under MRAT, an assessment must be based on the market value of the property on July 1 of the year before the assessment. In this case the date is July 1, 2009, this being a 2010 assessment.

The pertinent sections of MRAT are:

> section 1(f) *"assessment year" means the year prior to the taxation year;*
>
> section 2 An assessment of property based on market value
>
> > (a) must be prepared using mass appraisal,
> > (b) must be an estimate of the value of the fee simple estate in the property, and
> > (c) must reflect typical market conditions for properties similar to that property.
>
> section 3 Any assessment prepared in accordance with the Act must be an estimate of the value of a property on July 1 of the assessment year.
>
> section 6(1) When an assessor is preparing an assessment for a parcel of land and the improvements to it, the valuation standard for the land and improvements is market value unless subsection (2) or (3) applies.

All of the sales evidence Ms. Green presented at the hearing consisted of *post facto* sales. All these sales occurred more than six months after the valuation date. The Board gives this information no weight. The sales came after the valuation year and the Board has consistently held that *post facto* evidence can be used only for trending, and not for valuation as the Complainant has requested. The Board has long held to this interpretation of the *MGA* and MRAC.

> *Sunrise Village (Lethbridge) Holdings Ltd. v. Lethbridge (City)*, MGB 103/07: "the Board finds that this sale was post facto to the date of assessment and thus, cannot be relied upon as it was not available at the time of valuation."
>
> *Rio Verde Properties Ltd. v. Calgary (City)*, MGB 130/03: "Market data that becomes available after the valuation data is referred to as post-facto and generally is not to be used for the purposes of assessment valuation. In limited circumstances it can be used, but this is generally restricted to supporting a trend indicated by market data existing on the valuation date."

The Respondent presented pre-valuation comparables that support the assessment. The sales values have been adjusted to July 1, 2009. The comparables show that even when considering the subject property's lesser condition of fair, the assessment is within the range of value for a fair assessment. Two of the three sales comparables appear to be inferior properties by location, and still their time adjusted sale price was significantly above the assessment of the subject property. There is no evidence of merit to vary it further.

Issue 2

The Board has no jurisdiction to hear tax complaints.

> *MGA 460(6) There is no right to make a complaint about any tax rate.*

There are no dissenting reasons by any panel member.

Dated at Edmonton, Alberta this 24th day of October, 2010 and signed by the Presiding Member on behalf of all three panel members who agree with this decision.

John Doe, Presiding Member
LARB/CARB

Questions:

1. Does the draft decision meet the requirements in the *MGA* or MRAC about the content and timing of decisions?

2. Does the decision clearly state the matters to be decided as raised on the complaint form? – Can you tell what the case was about? What could be done to clarify?

3. Does the decision tell you the positions of the parties on the issues? What could be done to clarify?

4. Can you tell what relevant evidence the panel considered and relied on? What could be done to clarify?

5. Does the decision tell you what parts of the legislation the panel is applying? What could be done to clarify?

6. Does the decision clearly tell you why the panel decided as it did? What could be done to clarify?

A User's Guide to Legislation

Interpretation Act

Users of the Statutes of Alberta should be aware of the *Interpretation Act* (RSA 2000 cI-8). It sets out various presumptions, definitions, and rules of statutory interpretation and construction that apply to all Alberta acts and regulations. For example, the *Interpretation Act* contains definitions that apply to words and phrases used in all acts, except where an act indicates otherwise.

Organization of a Statute (Act)

Preambles

Some acts begin with a preamble. The preamble is part of the act and may be used to interpret the act.

Definitions

Most acts contain a definition section that lists, in alphabetical order, definitions of terms used in the act. The definition section is usually at the beginning of the act. However, definitions that are restricted in their application to a section, part, division or other portion of an act may be at the beginning of that section, part, division or other portion.

Marginal Notes and Section Headers (Side notes)

Marginal notes and section headers (side notes) are not part of the statute and should not be relied on to interpret the act. They are included only for convenience of reference and may be changed editorially whenever appropriate.

Sections, Subsections, etc.

Every act is composed of numbered sections, cited as section 1, 2, 3, etc.

- many sections are further divided into two or more subsections, cited as subsection (1), (2), (3), etc.
- some sections and subsections contain clauses, cited as clause (a), (b), (c), etc., sub-clauses, cited as sub-clause (i), (ii), (iii), etc., paragraphs, cited as paragraph (A), (B), (C), etc., and subparagraphs, cited as subparagraph (I), (II), (III), etc.

Decimal Numbering

The numbering system can be easily understood by regarding each section number as if it were followed by a decimal point and some zeros that are not shown; that is, section 4 can be thought of as 4.0 or 4.00 etc.

In applying the system, only one decimal place is usually needed, so that between sections 4 (4.0) and 5 (5.0) sections 4.1 to 4.9 can be added (4.10 is not used since it is the same as 4.1), for a total of nine sections.

By later amendments, up to nine more sections can be added between any two sections by using two decimal places, for example:

- between section 4 and 4.1, sections 4.01 to 4.09 can be added,
- between sections 4.1 and 4.2, sections 4.11 to 4.19 can be added, and
- between sections 4.9 and 5, sections 4.91 to 4.99 can be added.

and in the same manner a further nine sections can be added between any of those sections by using three decimal places.

If it is necessary to add more than nine sections in the same place at the same time, then some of the sections are numbered using an additional decimal place.

The same rules apply to adding new subsections, clauses, sub-clauses and paragraphs, so that

- sub-sections are numbered (1.1) to (1.9),
- clauses are numbered (a.1) to (a.9),
- sub-clauses are numbered (i.1) to (i.9),
- paragraphs are numbered (A.1) to (A.9), and
- sub-paragraphs are numbered (I.1) to (I.9)

Parts, Divisions

Some acts are divided into numbered parts, cited as Part 1, Part 2, etc. A part may be divided into divisions cited as Division 1, Division 2, etc.

Transitional Provisions

If an act or provision cannot come into force on an intended day without hardship or confusion occurring, the act may contain a transitional provision. Transitional provisions are used to provide for the transition from an earlier act to the act that replaces it, or to phase in how a new or an amending act applies to persons affected by it. A transitional provision may be included in an act if, for example, certain provisions of the previous act will apply for a significant period of time or if the provisions may affect many persons. Transitional provisions are usually located near the end of the act.

Consequential Amendments

Consequential amendments in an act amend other acts that are affected by that act. Consequential amendments are included in the acts as published in the annual volume.

In the loose-leaf statutes and office consolidations, all amendments are incorporated into the amended acts. If an act made consequential amendments to other acts, an editorial note to that effect is included in the consolidated amending act.

Repeal Provisions

Provisions repealing other acts are placed near the end of the act, immediately before the coming into force section.

Coming Into Force Provisions

The section dealing with the coming into force of an act or of provisions of an act is usually the last section of the act. If there is no coming into force provision in an act, the *Interpretation Act* (RSA 2000 cI-8) provides that the act comes into force on the date of Royal Assent. The Royal Assent date is on the first page of each act in the annual statute volume, following the chapter number.

If an act, or a portion of an act, comes into force in a manner other than by Royal Assent, the last section of the act will set out the method. The act, or portion of the act, may come into force on proclamation or on a named future date, or may be deemed to have come into force on a named previous date.

Citations (Historical References)

Each section of a consolidated act is followed by the citation for that section and the citations of any amendments to that section. Citations do not form part of the act. They are added editorially.

Relevant Legislation

1. *Interpretation Act*
2. *Municipal Government Act*
3. Matters Relating to Assessment Complaints Regulation
4. Matters Relating to Assessment and Taxation Regulation
5. Minister's Guidelines

Attached Documents:

1. Complaint Form
2. Notice Types
3. Complaint Process timelines for a LARB
4. Complaint Process timelines for a CARB
5. Complaint Process timelines for the MGB
6. Process for Administrative Clerks

The Assessment Review Board Complaint Form Page 1

Government of Alberta

Assessment Review Board Complaint

Municipality Name (as shown on your assessment notice or tax notice) | Tax Year

Section 1 - Notice Type

Assessment Notice: Annual Assessment; Amended Annual Assessment; Supplementary Assessment; Amended Supplementary Assessment

Tax Notice: Business Tax; Other Tax (excluding property tax and business tax)

Name of Other Tax

Section 2 - Property Information

Assessment Roll or Tax Roll Number:

Property Address

Legal Land Description (i.e. Plan, Block, Lot or ATS 1/4 Sec-Twp-Rng-Mer)

Property Type (check all that apply): Residential property with 3 or less dwelling units; Residential property with 4 or more dwelling units; Farm land; Non-residential property; Machinery and equipment

Business Name (if pertaining to business tax) | Business Owner(s)

Section 3 - Complainant Information Is the complainant the assessed person or taxpayer for the property under complaint? Yes No

Note: If this complaint is being filed on behalf of the assessed person or taxpayer by an agent for a fee, or a potential fee, the Assessment Complaints Agent Authorization form must be completed by the assessed person or taxpayer of the property and must be submitted with this complaint form.

Complainant Name (if the complainant, assessed person, or taxpayer is a company, enter the complete legal name of the company)

Mailing Address (if different from above) | City/Town | Province | Postal Code

Telephone Number (include area code) | Fax Number (include area code) | Email Address

Section 4 - Complaint Information Check the matter(s) that apply to the complaint (see reverse for coding):

1 2 3 4 5 6 7 8 9 10

Note: Some matters or information may be corrected by contacting the municipal assessor prior to filing a formal complaint.

If information was requested from the municipality pursuant to sections 299 or 300 of the Municipal Government Act, was the information provided? Yes No

Section 5 - Reason(s) for Complaint **Note: An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.**

The reasons for a complaint must accompany the complaint form, including:

- what information shown on an assessment notice or tax notice is incorrect,
- in what respect that information is incorrect, including identifying the specific issues related to the incorrect information that are to be decided by the assessment review board, and the grounds in support of these issues,
- what the correct information is,
- if the complaint relates to an assessment, the requested assessed value. Requested assessed value:

(a) include a statement that the complainant and the respondent have discussed the matters for complaint, specifying the date and outcome of that discussion, including the details of any issues or facts agreed to by the parties, or

(b) include a statement, if the complainant and the respondent have not discussed the matters for complaint, specifying why no discussion was held.

Note: If necessary, additional pages or documentation required to complete this section may be submitted with this complaint form.

Section 6 - Complaint Filing Fee

If the municipality has set filing fees payable by persons wishing to make a complaint, the filing fee must accompany the complaint form, or the complaint will be invalid and returned to the person making the complaint.

If the assessment review board makes a decision in favour of the complainant, or if all the issues under complaint are corrected by agreement between the complainant and the assessor and the complaint is withdrawn prior to the hearing, the filing fee will be refunded.

Section 7 - Complainant Signature

Signature | Printed Name of Signatory Person and Title | Date (mm/dd/yyyy)

Important Notice: Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.

Assessment Review Board Clerk Use Only

Was the complaint filed on time?	Yes	No		
Is the required information included on or with the complaint form?	Yes	No		
Was the required filing fee included?	Yes	No	N/A	Date received:
Was a properly completed authorization form attached?	Yes	No	N/A	
Complaint to be heard by:	LARB	CARB		

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The Assessment Review Board Complaint Form Page 2

MATTERS FOR A COMPLAINT

A complaint to the assessment review board may be about any of the following matters shown on an assessment notice or on a tax notice (other than a property tax notice):

1. the description of the property or business
2. the name or mailing address of an assessed person or taxpayer
3. an assessment amount
4. an assessment class
5. an assessment sub-class
6. the type of property
7. the type of improvement
8. school support
9. whether the property or business is assessable
10. whether the property or business is exempt from taxation

Note: To eliminate the need to file a complaint, some matters or information shown on an assessment notice or tax notice may be corrected by contacting the municipal assessor. It is advised to discuss any concerns about the matters with the municipal assessor prior to filing this complaint.
If a complaint fee is required by the municipality, it will be indicated on the assessment notice. Your complaint form will not be filed and will be returned to you unless the required complaint fee indicated on your assessment notice is enclosed.

ASSESSMENT REVIEW BOARDS

A Local Assessment Review Board will hear complaints about residential property with 3 or less dwelling units, farm land, or matters shown on a tax notice (other than a property tax notice).
A Composite Assessment Review Board will hear complaints about residential property with 4 or more dwelling units or non-residential property.

DISCLOSURE

Disclosure must include:

- All relevant facts supporting the matters of complaint described on this complaint form.
- All documentary evidence to be presented at the hearing.
- A list of witnesses who will give evidence at the hearing.
- A summary of testimonial evidence.
- The legislative grounds and reason for the complaint.
- Relevant case law and any other information that the complainant considers relevant.

Disclosure timelines:

- For a complaint about any matter other than an assessment, the parties must provide full disclosure at least 5 days before the scheduled hearing date.
- For a complaint about an assessment - Local Assessment Review Board:
  - Complainant must provide full disclosure at least 21 days before the scheduled hearing date.
  - Respondent must provide full disclosure at least 7 days before the scheduled hearing date.
  - Complainant must provide rebuttal at least 3 days before the scheduled hearing date.
- For a complaint about an assessment - Composite Assessment Review Board:
  - Complainant must provide full disclosure at least 42 days before the scheduled hearing date.
  - Respondent must provide full disclosure at least 14 days before the scheduled hearing date.
  - Complainant must provide rebuttal at least 7 days before the scheduled hearing date.

DISCLOSURE RULES

Timelines for disclosure must be followed.
Information that has not been disclosed will not be heard by an assessment review board, and
Disclosure timelines can be reduced if the disclosure information is provided at the time the complaint form is filed. Both the complainant and the assessor must agree to reduce the timelines.

PENALTIES

A Composite Assessment Review Board may award costs against any party to a complaint that has not provided full disclosure in accordance with the regulations.

IMPORTANT NOTICES

Your completed complaint form and any supporting attachments, the agent authorization form, and the prescribed filing fee must be submitted to the person and address with whom a complaint must be filed as shown on the assessment notice or tax notice, prior to the deadline indicated on the assessment notice or tax notice. Complaints with an incomplete complaint form, complaints submitted after the filing deadline, or complaints without the required filing fee, are invalid.

An assessment review board must not hear any matter in support of an issue that is not identified on the complaint form.

The assessment review board clerk will notify all parties of the hearing date and location.

For more details about disclosure please see the *Matters Relating to Assessment Complaints* Regulation.

To avoid penalties, taxes must be paid on or before the deadline specified on the tax notice even if a complaint is filed.

The personal information on this form is being collected under the authority of the *Municipal Government Act*, section 480 as well as the *Freedom of Information and Protection of Privacy Act*, section 33(c). The information will be used for administrative purposes and to process your complaint. For further information, contact your local Assessment Review Board.

Table 1 – Notice Types

Matters for a complaint s. 460(5) for LARB and CARB	Notice Types								
	CARB res. with 4 or more units and non-res.	LARB res. with 3 or less units and farm land	LARB Tax Notices, not including a property tax notice						
	Assessment notice, incl. suppl.	Assessment notice, incl. suppl.	Business tax, incl. suppl. (tax notice)	BRZ (tax notice)	CR levy (tax notice)	Special tax (tax notice)	Well Drill Equip. (tax notice)	Local Improv. (tax notice)	CAP levy (tax notice)
(a) description of a property or business	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
(b) name and mailing address of an assessed person or taxpayer	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
(c) an assessment	Yes	Yes	Yes (s. 374(1))	Yes (AR89/05)	ref. to assessed value	ref. to asmnt.		ref. to asmnt.	
(d) assessment class (see s. 297(1))	Yes	Yes							
(e) assessment sub-class (see s. 297(2))	N/A (vacant only)	Yes							
(f) "type" of property	Yes	Yes							
(g) "type" of improvement (see s. 284(1)(j))	Yes	Yes							
(h) school support (responsibility of municipality)	Yes	Yes							
(i) whether property is assessable (see s. 298)	Yes	Yes	Yes (s. 374.1)						
(j) whether property is taxable or business is exempt from taxation under Part 10	Yes	Yes	Yes			Yes		Yes	

Table 2 – Local Assessment Review Board Timelines

Local Assessment Review Board (LARB) Timelines Step and Timeline	Residential property, 3 or less dwelling units, or farmland Assessments LARB	Business tax Assessment LARB	Non-assessment Matters on Assessment Notice One member LARB	Matters on Tax Notice One member LARB	Administrative or Procedural Matters One member LARB
Assessment or tax notice sent					
(a) Number of days for filing a complaint	60 days	30 days	60 days	30 days	n/a
Complaint filed					
(b) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	30 days or less	30 days or less	n/a
(c) Soonest hearing date after complaint is filed	35 days	35 days	n/a	n/a	n/a
(d) Number of days before hearing to notify parties of time and place of hearing	35 days	35 days	15 days	15 days	15 days
(e) Number of days before hearing for complainant disclosure	21 days	21 days	7 days	7 days	7 days
(f) Number of days before hearing for respondent disclosure	7 days	7 days	7 days	7 days	7 days
(g) Number of days before hearing for complainant rebuttal	3 days	3 days	n/a	n/a	n/a
Merit hearing					
(h) Issue written decision	30 days	30 days	30 days	30 days	30 days
(i) Send decision	7 days	7 days	7 days	7 days	7 days

Table 3 – Composite Assessment Review Board Timelines

Composite Assessment Review Board (CARB) Timelines Step and Timeline	Residential property and 4 or more dwelling unit Assessment CARB	Non-Residential property Assessment CARB	Non-assessment Matters on Assessment Notice One member CARB	Administrative or Procedural Matters One member CARB
Assessment or tax notice sent				
(a) Number of days for filing a complaint	60 days	60 days	60 days	n/a
Complaint filed				
(b) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	30 days or less	n/a
(c) Soonest hearing date after complaint is filed	70 days	70 days	n/a	n/a
(d) Number of days before hearing to notify parties of time and place of hearing	70 days	70 days	15 days	15 days
(e) Number of days before hearing for complainant disclosure	42 days	42 days	7 days	7 days
(f) Number of days before hearing for respondent disclosure	14 days	14 days	7 days	7 days
(g) Number of days before hearing for complainant rebuttal	7 days	7 days	n/a	n/a
Merit hearing				
(h) Issue written decision	30 days	30 days	30 days	30 days
(i) Send decision	7 days	7 days	7 days	7 days

Table 4 –Municipal Government Board

Municipal Government Board Timelines Step and Timeline	Linear Property Assessment	Non assessment Matters on Linear Property Assessment Notice	Equalized Assessment (report of all equalized assessments)	Administrative or Procedural Matters
Assessment notice sent				
(j) Number of days for filing a complaint	60 days	60 days	30 days	n/a
Complaint filed				
(k) Number of days to provide copy of complaint to respondent	30 days or less	30 days or less	7 days or less	n/a
(l) Soonest hearing date after complaint is filed	70 days	n/a	70 days	n/a
(m) Number of days before hearing to notify parties of time and place of hearing	70 days	15 days	70 days	15 days
(n) Number of days before hearing for complainant disclosure	42 days	7 days	42 days	7 days
(o) Number of days before hearing for respondent disclosure	14 days	7 days	14 days	7 days
(p) Number of days before hearing for complainant rebuttal	7 days	n/a	7 days	n/a
Merit hearing				
(q) Issue written decision	30 days	30 days	30 days	30 days
(r) Send decision	7 days	7 days	7 days	7 days

Table 5 – Process for Administrative Clerks

Assessment Review Board Clerk Duties and Responsibilities	
Complaint is filed	**Receive and categorize complaint (LARB CARB)**
Municipality establishes ARBs including one-member ARBs	**Municipality appoints members**
MGB informed of CARB complaints	**Presiding Officer assigned by MGB**
Complaint reviewed for compliance	i. **Time** ii. **Content** iii. **Standardized Complaint Form complete**
Complaint reviewed for disclosure process and timelines	**Based on property type, a complaint would follow either the LARB or CARB disclosure process and timelines**
Where all parties have consented	**The disclosure timelines for LARB may be substituted for the disclosure timelines for CARB, and conversely, the disclosure timeline for CARB may be substituted for the disclosure timeline for LARB**
Notify Municipality / Assessor of complaints	**Notice to be given within 30 days of receiving complaints**
Schedule Hearings	i. **Length of hearing, one-member board, etc** i. **For CARB complaints, hearings at least 70 days after complaint is filed** ii. **For LARB complaints, hearings at least 35 days after the complaint is filed**
Notify parties of hearings	i. **For CARB complaints, notify parties of time and location of hearing at least 7 0 days before the hearing** ii. **For LARB complaints, notify parties at least 35 days before the hearing**

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Municipal Affairs

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